



## Virtual courtrooms- how electricity regulators are functioning amidst a pandemic

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Manabika Mandal<sup>1</sup>, Prayas (Energy Group)<sup>2</sup>

Activities in the country have been halted since March 2020 to maintain physical distancing and to contain the spread of the nCovid-19 virus. Consequently, courts and regulatory institutions have not been able to function at full capacity, leading to piling up of cases before them. Observing this, as a much-required welcome step, some institutions in the electricity sector have started conducting virtual hearings. This article discusses where and how such hearings are being conducted. While economic activities are gradually opening up in June, it will possibly be a while before these institutions can return to previous levels of functioning. Hence, it is of interest to understand best practices, procedural issues, and the level of access to hearings conducted by public institutions, given the challenges we will face in adapting to a global pandemic. Moreover, conducting streamlined virtual hearing in the future, continued along with physical meetings, could increase participation.

### 1. How are hearings taking place?

The Appellate Tribunal for Electricity (APTEL) issued a [circular](#) in mid-April stating that urgent cases would be heard through video-conferencing. Soon after, the Central Electricity Regulatory Commission (CERC) and various other State Electricity Regulatory Commissions (SERCs) followed suit. Table 1 captures details of regulatory institutions in the electricity sector which have been conducting virtual hearings and have uploaded relevant details on their websites.

Table 1: Details of various regulatory institutions conducting virtual hearings

Regulatory Institution/ SERC	E-hearing platform	Informational material prepared for joining virtual platforms?	Unique Practice/s
<a href="#">APTEL</a>	Vidyo	Detailed tabular information on protocols during hearings	-
<a href="#">CERC</a>	Vidyo	Quick user guide & detailed tabular information on protocols during hearings	-
<a href="#">Andhra Pradesh</a>	Google Meet	Published "do's and don'ts" table for consumers attending the meeting through a <a href="#">public notice</a>	Has familiarization sessions to address technical issues one day ahead of hearings as well as 30 mins prior to hearing, anyone can join public hearings by accessing meeting link from <a href="#">APEREC's website</a>
<a href="#">Haryana</a>	Vidyo	-	-
<a href="#">Karnataka</a>	Webex	Standard operating procedures detail how to download app, join a meeting, A/V settings, how to share content-screenshots provided, dedicated technical helpdesk contacts	-
<a href="#">Kerala</a>	not mentioned	-	Anyone can join hearings by informing SERC secretary 7-5 days prior to hearing

Regulatory Institution/ SERC	E-hearing platform	Informational material prepared for joining virtual platforms?	Unique Practice/s
Madhya Pradesh	Webex	Virtual courtroom protocols detail how to download app, join a meeting, A/V settings, how to share content-screenshots provided	-
Maharashtra	Microsoft Teams	Practice directions detail how to download app, join a meeting, A/V settings, how to share content-screenshots provided	Test run 2 days prior & 15 mins before hearing, WhatsApp group to clarify doubts, MERC can hold Suo moto hearings, Live streaming with provision to post questions & comments
Rajasthan	Microsoft Teams	-	Test run 2 days prior to hearing
Tamil Nadu	Google Meet	Standard operating procedures detail how to download app, join a meeting, A/V settings, how to share content-screenshots provided	-
Uttar Pradesh	Google Meet	Standard operating procedures detail how to download app, join a meeting, A/V settings, how to share content-screenshots provided	-
West Bengal	Microsoft Teams	Detailed tabular information on protocols during hearings	-

Source: Compiled by Prayas (Energy Group) from various notices issued by regulatory institutions on their websites as on 10/06/2020

#### – E-filing and selection of cases

Most regulatory institutions are hearing cases that are perceived by them to be urgent. These cases could be ongoing ones or freshly filed through the e-filing system. APTEL, Karnataka and Maharashtra SERCs have stated that a separate request application has to be submitted by parties to be eligible for virtual hearings, after which it shall be taken up by the specific Commission on the basis of assessed urgency. Maharashtra SERC (MERC) has a unique practice that provides clarity in the guidelines itself regarding the course of action to be taken if a case is rejected for virtual hearing. The [practice directions](#)<sup>3</sup> mention that applicants will be intimated if requests for virtual hearings are declined, and that reapplication will not be allowed. Schedules of accepted cases are listed for hearing on the institutions' websites. While e-filing has been allowed, most guidelines mention that physical copies of the same will have to be filed with the Commission as soon as regular functioning is re-established. Further, to streamline e-hearing processes, only documents and presentations that have been submitted prior to the hearing can be referred to during hearings. Along with this, for e-security reasons, parties can attend the proceedings only through email addresses that have been pre-approved by the Commissions.

#### – Guidelines, requirements, and measures to enable smooth hearings

Remote access to these hearings requires certain levels of technical expertise. To simplify the process, many SERCs have issued detailed guidelines along with step-by-step instructions for joining the e-hearings on various web platforms. Added to this, SERCs in Maharashtra, Rajasthan, Madhya Pradesh, and Andhra Pradesh have kept provisions for prior test runs of these platforms to help litigants familiarize themselves. Details have been captured in Table 1. Technical requirements for these hearings include possession of a computer/laptop<sup>4</sup>, headphones/ earphones with microphones, access to a quiet environment and strong internet connection to support seamless participation in the hearings. During hearings, participants are expected to join in formal attire, not record the proceedings and keep their microphones on mute till they are permitted by the Commission to speak. After the proceedings are completed, parties are expected to file their final submissions via e-mail.

Many SERCs have published detailed informational material to help participants join the virtual meetings. These practice directions/ standard operating procedures consist of downloading the web platform, guidelines for video/audio decorum during the hearing, steps to follow before and after hearings. Some SERCs have even detailed out steps with the help of screenshots of web applications at various stages of set-up and usage. However, such information is available only in English. Table 1 captures this information along with some unique practices.

– *Some other hearing practices*

SERCs in Chhattisgarh, Gujarat, Himachal Pradesh, Jharkhand, Punjab, Uttarakhand, and the Joint Electricity Regulatory Commission (JERC) of Goa and Union Territories have also been holding, or are in the process of holding, virtual meetings with select parties but have not hosted guidelines/detailed information on their websites.<sup>5</sup> Some SERCs, such as Bihar’s, are holding hearings at the office premises while maintaining physical distancing protocols. Rajasthan SERC has even issued a notice stating that some physical hearings will start taking place, as the country enters the “unlock-1” phase.

2. *Nature of cases being heard virtually*

Most SERCs conducting virtual hearings, have been doing so since the beginning of May. Hearing schedules can be found on SERCs’ websites. Table 2 is a compilation of information available on these websites regarding the number of cases that have been scheduled for virtual hearing, the number of days on which hearing sessions were scheduled, and a broad overview of some of the issues taken up for hearing. It is commendable to note that SERCs are being able to hear a good number of cases, and quite frequently as well. For instance, between 14<sup>th</sup> May and 12<sup>th</sup> June in 2019, MERC held hearings on 8 days and heard around 6 cases/day, on average. Whereas, during the same period in 2020, MERC held meetings on 7 days and virtually heard about 4 cases/day. Uttar Pradesh SERC (UPERC) has scheduled to hold hearings on more days and hear more cases during the same period (12<sup>th</sup> May-26<sup>th</sup> June) amidst the lockdown than it did a year ago.<sup>6</sup>

*Table 2: Details of cases taken up virtually in various SERCs*

SERC	No. of cases scheduled to be heard virtually	No. of days on which cases were scheduled to be heard virtually	Avg no. of cases heard in a day	Period considered	Broad overview of some issues taken up during virtual hearings
Andhra Pradesh	67	11	6	9 <sup>th</sup> June-4 <sup>th</sup> Aug	Amendment to forecasting and scheduling regulations, generation tariff approval, wind PPAs, RPO, true-up for DISCOMs, transmission tariff for wind and captive, revision of open access regulations
Haryana	17	11	2	26 <sup>th</sup> May-15 <sup>th</sup> July	Open access-in railways & for RE, payments as per PPA, release of new connections, late payment surcharge, energy pool account regulations, R&M works
Kerala	17	11	2	8 <sup>th</sup> -26 <sup>th</sup> June	Open access, metro service connection, standard bid document for rooftop solar projects, hydro PPAs, hydro swapping, interest on delayed payment
Madhya Pradesh	25	3	8	2 <sup>nd</sup> June-10 <sup>th</sup> July	Capital investment plan for new MYT, generation tariff & truing up for thermal station, CAPEX approval

SERC	No. of cases scheduled to be heard virtually	No. of days on which cases were scheduled to be heard virtually	Avg no. of cases heard in a day	Period considered	Broad overview of some issues taken up during virtual hearings
Maha-rashtra	31	7	4	14 <sup>th</sup> May-12 <sup>th</sup> June	Review of multi-year tariff, RE PPAs, open access, banking, wind projects, PPA extension, tariff adoption
Rajasthan	13	4	3	10 <sup>th</sup> -25 <sup>th</sup> June	PPA extension, security interest, tax imposition on private generator due to change in law event
Tamil Nadu	41	3	14	2 <sup>nd</sup> -16 <sup>th</sup> June	Approval for procuring & tariff adoption for RTC power, COD extension for solar plants, implementation of KUSUM, capital investment plan, tariff for Chennai metro
Uttar Pradesh	44	14	3	12 <sup>th</sup> May-26 <sup>th</sup> June	Rooftop projects, draft competitive bidding documents, relaxation of regulations for generation, wind PPAs, interest on working capital, CAPEX approval, R&M approval, tariff for hydro projects

Source: Compiled by Prayas (Energy Group) from various schedules of hearings published on SERC websites as on 10.06.2020

### 3. Public participation and conduct of public hearings

Quite a few issues, pertinent to public interest, such as true-up, approval of capital investment plans and capital expenditure plans of DISCOMs and generating stations, have been taken up during virtual hearings. Costs approved during these sessions will have impact on consumer tariffs subsequently. Thus, public participation, as has been detailed in Sections 15 and 64 of the Electricity Act 2003, in these processes is vital. Most commonly, SERCs conduct public hearings during tariff determination processes. With the sudden announcement of a lock-down, many of these processes had to be shifted online. While deadlines for submission of written comments were extended, not too many public hearings were held online. However, CERC, Andhra Pradesh (APERC) and Uttar Pradesh SERCs have conducted virtual public hearings in this period.<sup>7</sup> In fact, APERC has scheduled multiple public hearings between mid-June and the beginning of August on issues such as approval of generation tariffs, amendment of open access regulations, and solar roof-top policy. MERC has facilitated public viewing by live-streaming all of its hearings. Not only has MERC issued specific guidelines regarding how to join the live-streaming sessions, there are provisions to join anonymously and to ask questions through a chat window as well.

### 4. Replicating best practices and ensuring access to virtual hearings

Virtual hearings are being conducted all across the globe, in the face of the pandemic. For instance, [municipality hearings](#) in the state of New York are being live streamed on popular video channel, YouTube, and concerned citizens can provide inputs via telephonic/ internet-based phone calls. USA's energy regulator, Federal Energy Regulatory Commission (FERC), is [webcasting it's hearings](#) as well. Interestingly, the recordings of these proceedings will be available in the archives for 3 months. This is indeed a good practice which is being practiced by APERC in India as well. The US Environment Protection Agency (EPA), which has been conducting virtual hearings since 2015, has recently come up with a [report](#) on best practices for modernizing public hearings. Some best practices include the use of visual aids, sharing relevant case documents beforehand, having provision for taking in oral comments,

and conduct of participant surveys. It also mentions that live question and answer sessions greatly help in enriching the process, over and above written or oral submissions.

Virtual hearings should not deter participation, especially given the sparse proliferation of technology in our country. Even though several SERCs have taken proactive steps to provide technical assistance for transitioning to online hearings, they might still be exclusionary. This is especially true in case of annual public hearings in tariff matters, which see participation from various consumers, local consumer centric groups when hearings are held in multiple locations across a state. In such situations, special arrangements should be made to ensure maximum participation. Along with orientation sessions to virtual public hearings, local DISCOM offices could be used to facilitate participation in virtual hearings and host broadcasts, while maintaining physical distancing. A [similar idea](#) has been adopted by a District Magistrate in Lucknow, who has been conducting virtual public hearings for grievances and plans on connecting block-level offices to the system soon. Accessibility to virtual hearings could further be improved by issuing guidelines in local languages and by providing closed caption options on the screen for those with speech and hearing difficulties.<sup>8</sup>

Good practices such as e-filing systems and live streaming of court hearings are quickly being adopted across SERCs. Even when institutions return to previous levels of functioning in the future, the practice should be continued along with physical hearings for greater access and more involved participation in electricity regulatory processes.

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<sup>2</sup> This article is part of an ongoing series called Power Perspectives which provides brief commentaries and analysis of important developments in the Indian power sector, in various states and at the national level. The portal with all the articles can be accessed here: <https://prayaspune.org/peg/resources/power-perspective-portal.html>

Comments and suggestions on the series are welcome, and can be addressed to: [powerperspectives@prayaspune.org](mailto:powerperspectives@prayaspune.org)

<sup>3</sup> MERC press release, 11/05/2020: "Practice directions stipulating the protocol for remote access hearing through video conference"

<sup>4</sup> While Andhra Pradesh SERC mentions that participants should avoid using mobile phone devices to join the hearing and should login only through computers to ensure stronger connection, Madhya Pradesh SERC allows mobile phone device logins as well.

<sup>5</sup> Information obtained via telephonic conversation with SERC representatives as on 12.06.2020, & websites access as on 10.06.2020.

<sup>6</sup> In 2019, between 12<sup>th</sup> May and 26<sup>th</sup> June, UPERC had held hearings on 9 days and heard 38 cases.

<sup>7</sup> Virtual public hearing held by UPERC for "Prudence check of capital cost of Alaknanda Hydro Electric Power Project Srinagar", Petition No. 1267 of 2017 on 02/06/2020. APERC has held multiple public hearings which can be accessed here:

[http://aperc.gov.in/page/Hearings/Hearing\\_Schedule](http://aperc.gov.in/page/Hearings/Hearing_Schedule), recently CERC had a [public hearing](#) for tariff of renewables

<sup>8</sup> Southeastern Pennsylvania Transportation Authority provides closed captions and sign language interpretation during public hearings.

#### Contact us:

Prayas (Energy Group)  
Unit III A & B, Devgiri,  
Kothrud Industrial Area,  
Joshi Railway Museum  
Lane, Kothrud,  
Pune 411 038 Maharashtra

 020 – 2542 0720  
 [energy@prayaspune.org](mailto:energy@prayaspune.org)  
 <http://www.prayaspune.org/peg>

