Electricity (Promoting Renewable Energy Through Green Energy Open Access) Rules, 2022

20 June 2022

Partner: *Niharika Puri,* ***Associate:*** *Tinnish Sharma*

Background

To boost open access in the renewable energy sector, the Ministry of Power (**Ministry**) had released the Draft Electricity (Promoting Renewable Energy Through Green Energy Open Access) Rules, 2021 (**Draft Rules**) on 16 August 2021, seeking comments from the public. The Draft Rules received a mixed response from industry stakeholders. The inclusion of green hydrogen and green ammonia for fulfilment of renewable purchase obligations (**RPO**) (i.e. the obligation to purchase a certain percentage of electricity generated from renewable sources), and the reduction in the sanctioned load/contracted demand limit for grant of open access to transmission and distribution systems were seen as welcome changes. However, distribution licensees (**DISCOMs**) were skeptical about the adequacy of compensation for revenue losses on account of the expected increased migration to open access.

Following a public consultation process, the Government has issued new rules for promoting renewable energy by providing simplified processes and incentives for open access of green energy.

Subsequently, on 6 June 2022, the Ministry notified the finalised Electricity (Promoting Renewable Energy Through Green Energy Open Access) Rules, 2022 (**Rules**) for promoting the generation, purchase, and consumption of green energy. The Rules require state commissions to amend existing regulations, if necessary, to make them consistent with these Rules.

Key aspects

1 Lower load limit requirement for grant of green energy open access

Under the Rules, the contracted demand or sanctioned load limit for grant of open access has been reduced from 1 MW (as stipulated under the Electricity Act, 2003 (**Electricity Act**)) to 100 kW for green energy (with no minimum limit being set out for captive consumers). This is a significant and welcome change as such lower limit will enable several smaller electricity consumers, especially MSMEs, to purchase renewable power through open access to improve their green profile while also lowering electricity costs.

2 Simplified application process and timelines

The Rules bring about considerable ease in applying for and being granted green energy open access. They mandate the setting up of a central nodal agency for operating a single-window green energy open access system through a centralised registry. To facilitate this, a common application form will be prepared and issued

by the central nodal agency within 60 days of commencement of the Rules. It shall then be forwarded to the relevant entity responsible for granting open access – i.e. the relevant load despatch centre for short-term open access, and the state or central transmission utility (as the case may be) for medium-term and long-term open access.

The Rules prescribe a 15 day timeline for approval of each application, failing which, the application will be deemed to have been approved subject to the fulfilment of specified technical requirements. Thus, the Rules provide necessary relief to captive open access consumers, especially in states like Haryana where consumers and generators have faced several challenges in developing captive renewable energy projects due to the DISCOMS' refusal to grant open access approvals on arbitrary grounds.

3 Promotion of renewable energy generation

The Rules seek to promote the generation of renewable energy by providing that green open access will be prioritised over fossil fuels based open access, thereby providing a much needed shot in the arm for the sector.

4 RPO and green certificates

The Rules provide for uniform RPO to be prescribed for all obligated entities (including DISCOMs, captive consumers, and open access consumers) within the area of a DISCOM, which may be met through:

i. self-generation of renewable energy;

ii. procurement of renewable energy through open access – directly (third party and captive), or through trading licensees or power markets;

iii. purchasing green ammonia or green hydrogen;

iv. purchasing renewable energy certificates; or, most importantly,

v. requisitions from a DISCOM.

Thus, the Rules allow any entity to now purchase green energy (with the flexibility to give separate requisitions for solar and non-solar), either for fulfiling its RPO or otherwise, through a DISCOM at a tariff determined separately by the appropriate commission. Keeping the DISCOMS' operational interests in mind, the Rules stipulate that any such requisition of green energy from a DISCOM has to be for a minimum period of one year, and any green energy purchased from a DISCOM in excess of the consumer's RPO will be counted towards the DISCOM's RPO compliance. That said, the DISCOM is also required (at the consumer's request) to issue green certificates (i.e. Renewable Energy Certificates, which are market-based instruments certifying that the bearer owns one megawatt-hour (MWh) of electricity generated from a renewable energy source, and are capable of being traded in the open market, including to facilitate the purchaser's RPO compliance) on an annual basis to consumers being supplied green energy through the DISCOM for the green energy procured beyond such consumer's RPO. Consumers could potentially trade such certificates which could be an additional revenue stream. However, the Rules do not clarify if green certificates will also be issued with respect to renewable energy purchased from the DISCOM in excess of the consumer's RPO, where such energy generation is also being counted towards the DISCOM's RPO compliance as, in such a case, green certificates would be received for power that has already been utilised to meet the DISCOM's RPO.

5 Green energy open access charges

Some certainty has also been provided on the open access charges proposed to be levied on green energy open access consumers. The Rules provide that other than:

i. transmission charges;

ii. wheeling charges;

iii. cross-subsidy charges (which are exempt for captive projects under the Electricity Act and for waste-to-energy plants and green hydrogen or green ammonia production through green energy under the Rules); and

iv. stand-by charges (which will not be more than 10% of the energy charges applicable to a consumer tariff category),

no other open access charges will be levied for green energy open access.

With respect to additional surcharge (i.e., a surcharge payable to meet a DISCOM's fixed costs), the Rules provide that no additional surcharge will be applicable to power produced from waste-to-energy plants and green hydrogen or green ammonia production. In addition, the Rules also exempt the payment of any additional surcharge if 'fixed charges' are being paid by the consumer. While the Rules do not elaborate on what such 'fixed charges' are, it appears that these refer to the fixed charges payable to a DISCOM (as determined under Section 45(3)(a) of the Electricity Act) for supply of power from such DISCOM.

The Rules provide that the cross subsidy surcharge applicable will be as per the Tariff Policy, 2016 issued by the Ministry (which states that cross subsidy surcharges should be reduced over time). However, the Rules instead contemplate an increase in the cross subsidy surcharge over time, albeit setting out a cap on increases in the applicable cross-subsidy surcharge by limiting increases over a 12 year period to no more than 50% of the surcharge fixed for the year in which open access is granted. That said, setting out such cap leads to improved predictability of cash outflows.

The Rules also provide that in order to have a common methodology for calculation of open access charges for green energy open access, model regulations will be issued by the forum of regulators within four months from the Rules being issued. Given that these charges currently vary from state to state, this is a positive step aimed at bringing consistency and uniformity of charges.

6 Banking of surplus energy

While the Rules allow for banking of surplus energy generated with the grid, the permitted quantum of such banked power has been pegged to a minimum of 30% (which may be higher) of the total monthly electricity consumption from the DISCOM, and not to the total monthly electricity consumption from all sources. In addition, the Rules direct that any banked energy is required to be adjusted within the same month, and cannot be carried forward to subsequent months. While this provision does bring about a consistent position in the banking regime across the country (given that prior to these Rules, banking provisions varied from state to state, with annual banking being allowed in some states, monthly in some, and the provision of banking being withdrawn altogether in some), given the infirm nature of renewable energy, a monthly banking system may result in loss of the excess generation which cannot be consumed within the same month in which it is generated and banked.

Conclusion

All things considered, the Rules are a welcome step towards creating a suitable policy framework to achieve India's 2070 net-zero target of carbon emissions, and should help accelerate substantial renewable energy capacity addition in the country, especially renewable projects, to cater to the corporate consumer segment.