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GREEN ENERGY OPEN ACCESS RULES – A BREATHING SPACE FOR PARTICIPANTS

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In a bid to promote green energy in India, the Ministry of Power (MoP), on 16 August 2021 had released the Draft Electricity (Promoting Renewable Energy through Green Energy Open Access) Rules, 2021 for seeking public comments. Pursuant to the consultative process, MoP, on 6 June 2022, notified the Electricity (Promoting Renewable Energy Through Green Energy Open Access Rules) 2022 (GoAR) with immediate effect.

In this piece, we discuss the applicability of the GoAR, along with the key compliances and obligations cast by the GoAR.

Green energy, under the GoAR, is defined to mean the electrical energy from renewable sources of energy including hydro and storage (if such storage uses renewable energy) or any other technology as may be notified by the Government of India from time to time. This also includes any mechanism that utilises green energy to replace fossil fuels including production of green hydrogen or green ammonia.

GoAR applies to generation, purchase, and consumption of green energy (*including energy generated from a waste to energy plant*). These rules will be applicable on the entities that have contracted demand or sanctioned load of 100 kW or above except for captive consumers. In case of captive consumers, there will not be any limitation in relation to the load.

Green energy open access

To provide open access to the consumers of green energy, the appropriate commission, if required, may amend its regulations to make such regulations consistent with the GoAR. A central nodal agency will be notified by the Central Government to set up and operate a single window green energy open access system for renewable energy.

For granting green energy open access in relation to: (a) short term - the appropriate commission will notify the appropriate load despatch center as the nodal agency; and (b) medium term and long term - the appropriate commission will notify state or central transmission utility (as the case may be) as the nodal agency. The appropriate nodal agencies will make available all the relevant information regarding green energy open access to the public on the portal of the central nodal agency.

All applications for green energy open access are required to be submitted on the portal setup by the central nodal agency. Thereafter, the relevant nodal agency, through a written order, will approve such application within a period of 15 (fifteen) days of submission. However, upon failure of the nodal agency to approve the aforesaid application, it will be

deemed to have been approved (subject to the fulfillment of the technical requirements as specified by the appropriate commission).

Short term and medium term open access will be allowed if there is sufficient spare capacity available in the transmission system without any augmentation. However, for long term open access, the transmission system may be augmented (if required). It has been clarified that in such case priority will be given to long-term applicants in the existing system, if spare capacity is available. Also, open access for power generated from non-fossil fuel sources will be given priority over the open access for power generated from the fossil fuel sources. No application for open access will be denied unless the applicant has been given an opportunity of being heard in the matter.

The GoAR also enables a person aggrieved by an order of the relevant nodal agency to appeal against such order before the appropriate commission, within a period of 30 (thirty) days from the date of receipt of order. The appropriate commission will be required to dispose the appeal within a period of 3 (three) months and the order issued by it will be binding on the parties.

Renewable Purchase Obligation

There will be a uniform renewable purchase obligation (RPO), on all obligated entities (i.e., the entities mandated to fulfill RPO, which includes distribution licensees, captive users, and open access consumers in area of a distribution licensee).

As per the GoAR, any entity, whether obligated or not may generate, purchase, and consume renewable energy as per their requirements through:

- own/self generation from renewable energy sources: there will not be any capacity limit for installation of power plants from renewable energy sources, by entities for their own consumption and such plants may be set up at any location in India. Power from such plants will be transmitted through open access;
- procuring renewable energy through open access from any developer, either directly or through a trading licensee or through power markets;
- requisition from distribution licensee: any entity may elect to purchase green energy either up to a certain percentage of the consumption or its entire consumption and they may place a requisition for this with their distribution licensee. Such distribution licensee will procure the required quantity of green energy and supply it to the relevant entity. The consumer will have the flexibility to give separate requisition for consumption of power from sources based on solar and non-solar energy. Any requisition for green energy from a distribution licensee will be for a minimum period of one year, with a pre-specified quantum. The green energy purchased from distribution licensee or from renewable energy sources other than distribution licensee in excess of RPO of an obligated entity will be counted towards RPO compliance of the distribution licensee;
- consuming green energy from captive power plants;
- purchasing of renewable energy certificates in accordance with the applicable regulations;
- purchase of green hydrogen or green ammonia; and
- any other sources, as may be determined by the Central Government.

Banking

Banking (i.e. the surplus green energy injected in the grid and credited with the distribution licensee by the green energy open access consumers) will be permitted on a monthly basis, on payment of charges (fixed by the appropriate commission) to compensate additional costs, if any, incurred to the distribution licensee. The permitted quantum of banked energy by the green energy open access consumers will be at least 30% (thirty percent) of the total monthly consumption of electricity from the distribution licensee by the consumers.

Charges to be levied for open access

The charges required to be paid by the green energy open access consumers will be limited to: (a) transmission charges; (b) wheeling charges; (c) cross subsidy surcharge; and (d) applicable standby charges (i.e., the charges applicable to open access consumers against the standby arrangement provided by the distribution licensee, in case the open access consumer is unable to procure power from the generating sources with whom they have the agreements to procure power, due to outages of generator, transmission assets and the like). In relation to standby charges, it has been clarified that the standby charges (wherever applicable) will be specified by the state commission and such charges will not be applicable if the green energy open access consumers have given a notice, in advance (at least twenty-four hours before the time of delivery of power) for standby arrangement to the distribution licensee. The applicable standby charges will not be more than 10% (ten per cent) of the energy charges applicable to consumer tariff category.

The cross subsidy surcharge will be as per the provisions of tariff policy notified by the Central Government. The cross subsidy surcharge for green energy open access consumer will not be increased, for a period of 12 (twelve) years from the date of operating of the generating plant using renewable energy sources, by more than 50% (fifty percent) of the surcharge fixed for the year in which open access is granted.

Per the GoAR, it has been clarified that additional surcharge will not be applicable in case fixed charges are being paid by such a consumer. Additionally, the cross -subsidy surcharge and additional surcharge will not be applicable in case: (a) power produced from a waste-to-energy plant is supplied to the open access consumer; and (b) green energy is utilized for production of green hydrogen and green ammonia. The cross- subsidy surcharge payable by a consumer will be to meet the current level of cross subsidy within the area of supply of the distribution licensee.

For having a common methodology for calculation of all the open access charges, the forum of regulators will prepare model regulations on methodology for calculation of open access charges (as well as banking charges) within a period of 4 (four) months from the commencement of GoAR. The GoAR requires that such methodology should not be onerous and should meet the prudent cost of the distribution licensee in order to fulfil the objective of promoting the procurement of green energy by green energy open access consumers.

Green Certificate and Rating

The distribution licensee will give green certificate on yearly basis to the consumers (on request) for the green energy supplied to them by the licensee beyond the RPO of the consumers.

Further, GoAR provides for the introduction of ratings, by the state commission, of the consumers of the distribution licensee, based on the percentage of green energy purchased by such consumers.

Key Takeaways

The GoAR is a welcome move for the promotion of generation, purchase, and consumption of green energy including the waste to energy. The procedure for obtaining open access to

green power has been simplified. The GoAR will enable consumers to demand green power from distribution licensees and be a stakeholder in achieving India's commitments related to usage of non fossil fuels. In addition, limiting the cross subsidy surcharge and removal of additional surcharge under these rules will push the consumers to go green. This move of the Government of India will not only aid the commercial and industrial consumers to meet their RPOs but also accelerate India's renewable energy programme to ensure affordable, reliable, sustainable, and green energy for all.

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