

Green Hotline

August 01, 2022

MINISTRY OF POWER NOTIFIES NEW GREEN ENERGY OPEN ACCESS RULES, 2022

In June 2022, the Ministry of Power, Government of India issued the Electricity (Promoting Renewable Energy Through Green Energy Open Access) Rules, 2022 ("**GOA Rules**") with an intent to accelerate India's renewable energy program. The draft rules for above were issued in August 2021 and after the process of stakeholder consultation, the final GOA Rules have now been released.

In addition to the green energy open access consumers, almost all renewable power producers will benefit from the legal and regulatory certainty provided to the provisions such as renewable purchase obligation, green energy certificates, etc. The GOA Rules require the states to amend their respective state specific rules/regulations on the above issues to align themselves with the provisions under the GOA Rules.

GREEN ENERGY OPEN ACCESS AND APPLICATION PROCESS

Open Access has been conceived as an important tool of introducing competition in the power sector and ensuring choice to buyers and suppliers of electricity. The GOA Rules have substantially reduced the sanction load or contracted capacity requirement for applying for open access from 1 MW, as provided under the Electricity Act, 2003 ("**Electricity Act**") to 100 kW, while removing any minimum limit/requirement of sanctioned load for the captive consumers.

It is pertinent to note that the target entities which will benefit from the above provisions are not only the industrial consumers with lesser load capacity such as small scale businesses, MSMEs but also retail consumers such as large households which will now be able to access green energy, thereby increasing the access to energy across different consumer segments.

GOA Rules also give preference to the green energy open access application over the fossil fuel based open access applications. This is yet another step which provides much need regulatory prioritisation to the renewable energy consumers promoting and incentivising renewable energy generation by power producers.

In addition to above, the GOA Rules intends to set up a central nodal agency which shall be responsible for setting up an operating an integrated single window platform for renewable energy specific open access, accessible to all stakeholders in the power sector, including open access customers (both sellers and buyers) for automation and streamlining of such open access applications. We understand this intended platform to be similar to the National Open Access Registry ("**NOAR**") portal setup for the Power System Operation Corporation Ltd. (POSOCO) which is a centralized online platform which is currently managing the short-term open access to the inter-state transmission system in India.¹

The GOA Rules provide that all the green energy open access applications shall be submitted online in a standard format, which shall prepared and issued by the central nodal agency in consultation with the Forum of Regulators² within a period of 60 (sixty) days of the notification of the GOA Rules. Once submitted online through the aforesaid portal, these applications shall get routed to the concerned nodal agency notified by the appropriate State Electricity Regulatory Commission ("**SERC**") for grant of green energy open access i.e., the relevant State Load Despatch Centre ("**SLDC**") for short-term open access applications, and relevant State or Central Transmission Utility ("**STU**" or "**CTU**") for medium and long-term open access applications, as the case maybe. All the applications presented to the concerned nodal agency shall be resolved on a first come-first serve basis.

In this regard, the most welcome development is the deemed approval of green energy open access applications after 15 (fifteen) days in the event no approval, by an order in writing, is granted by the concerned nodal agency (i.e., SLDC, STU or CTU, as the case maybe) within such period. This shall bring relief to the open access customers where they will not have to any longer wait for the approvals which are usually delayed given the backlog of such applications or bureaucratic delays. Further to above, the GOA Rules also provide relief and regulatory certainty to the open access customers in the application approval process where it states that no application shall be denied without the opportunity of being heard the applicant and shall only be done so by way of a speaking order in writing.

The above provisions are very welcome developments however, highly dependent on the conduct of relevant regulatory authorities. While the GOA Rules aim to bring uniformity and streamline the process of applications, much is again left in the hands of the concerned nodal agency (i.e., SLDC, STU or CTU, as the case maybe) on the effective implementation of the GOA Rules by such authorities, which may again differ from state to state.

GREEN ENERGY OPEN ACCESS CHARGES

In a bid to bring consistency in the charges levied on the green energy open access customers across all states, the

Research Papers

Clinical Trials and Biomedical Research in India

April 22, 2025

Structuring Platform Investments in India For Foreign Investors

March 31, 2025

India's Oil & Gas Sector—at a Glance

March 27, 2025

Research Articles

2025 Watchlist: Life Sciences Sector India

April 04, 2025

Re-Evaluating Press Note 3 Of 2020: Should India's Land Borders Still Define Foreign Investment Boundaries?

February 04, 2025

INDIA 2025: The Emerging Powerhouse for Private Equity and M&A Deals

January 15, 2025

Audio

CCI's Deal Value Test

February 22, 2025

Securities Market Regulator's Continued Quest Against "Unfiltered" Financial Advice

December 18, 2024

Digital Lending - Part 1 - What's New with NBFC P2Ps

November 19, 2024

NDA Connect

Connect with us at events, conferences and seminars.

NDA Hotline

Click here to view Hotline archives.

Video

Vyapak Desai speaking on the danger of deepfakes | Legally Speaking with Tarun Nangia |

GOA Rules provide that to adopt a common calculation methodology for open access charges, model regulations will be issued by the Forum of Regulators within 4 a period of (four) months from the Rules being notified. While the above rules shall be notified eventually, the GOA Rules itemise all the charges payable by such customers and provide that no other charges except the charges mentioned below shall be applicable on such open access customers.

- a. Transmission charges;
- b. Wheeling charges;
- c. Cross subsidy Surcharge; and
- d. Standby charges wherever applicable

The GOA Rules prescribe that the cross-subsidy surcharge shall be applicable per the provisions under the Tariff Policy, 2016, albeit with certain modifications viz., overtime escalation in charges instead of reduction as provided under the Tariff Policy, 2016.

The GOA Rules exempt consumers from paying the cross-subsidy surcharge where (a) the power is generated from waste-to energy plants and (b) where the power is utilized for green hydrogen and green ammonia production; in addition to the exemption already provided to (c) captive power producers under the Electricity Act. Further, payment of additional surcharge³ is also exempt to the open access customers who are (a) already paying fixed energy charges and (b) are utilizing power for green hydrogen and green ammonia production.

In relation to the standby charges (i.e., charges payable to the distribution licensees for standby services provided by the distribution licensees during non-utilisation of their distribution network), the GOA Rules provide that the same shall not be levied if proper notice of 24 hours is given by the open access customer and also provides for an upper cap of 10 (ten) percent of the applicable energy charges applicable on the open access consumer.

BANKING OF ENERGY

Banking of power (depositing surplus energy by the generators with the distribution licensees and withdrawing the said energy previously deposited, when in deficit) has also been provided for the benefit of open access consumers. This is important for those open access consumers who are generating renewable energy (such as in cases of captive consumption, net metering, etc.) as given the infirm (variable) nature of renewable energy, sometimes there is surplus power generation (on a windy or a sunny day) and other times lesser or no generation (during no-wind or cloudy days).

The GOA Rules provide that banking of power shall be permitted to all the open access consumers on monthly basis and the distribution licensee will be obliged to provide such banking facility for a quantum of at least 30 (thirty) percent of the of the total monthly consumption of electricity from such distribution licensee by the consumers. The GOA Rules stipulate that the banking charges applicable for such service, shall be determined by the appropriate SERC. The GOA Rules limits carrying forward of the banked energy to a period of only 1 (one) month and provides that the adjustment for such banked energy shall take place in the concerned month itself. This is a potentially crippling limitation. As explained above given the infirm nature of renewable energy, there will inevitably be seasonally uneven generation which is less likely to be averaged out in the same month itself.

RENEWABLE PURCHASE OBLIGATION (RPO)

Section 86(1) (e) of the Electricity Act and the National Tariff Policy 2016 mandates that all '*obligated entities*' i.e., distribution licensees, captive consumers and open access consumers, should procure a specified percentage of their energy requirements from renewable sources, apart from meeting their scheduling requirements from thermal, hydro and other sources.

While RPO obligations have always formed a part of the scheme for promotion of green energy, there have been regulatory irregularities as each state has its own separate rules/regulations to govern such obligations and its own RPO targets. However, the GOA Rules introduce uniform RPO for all the obligated entities in area of a distribution licensee⁴ whilst providing a mechanism to meet such obligations in the following ways:

- a. By way of own renewable energy generation;
- b. By way of procurement of renewable energy either directly from renewable energy generators (which include captive consumption as mentioned in point d. below and direct third-party sale through open access) or indirectly (through trading licensee or purchasing renewable energy from power markets);
- c. By way of purchasing renewable energy from distribution licensee;
- d. By way of captive consumption;
- e. By way of purchasing RECs; and
- f. By way of purchasing green hydrogen or green ammonia.

The RPO provisions under the GOA Rules provide for a detailed mechanism for procurement of renewable energy from the distribution licensees. However, for the purposes of commercial viability and certainty, the Rules provide that such procurement should be sought for a period of minimum one (1) year. In addition to the above, the quantum of renewable energy drawl shall also be pre-determined for a period of at least one (1) year. The GOA Rules potentially revolutionizes the green energy initiative by according the right to requisition renewable energy from the distribution licensees on voluntary basis (including in excess of RPO) up to 100% (in tranches of 25%).

The GOA Rules further provide that the relevant SERC shall determine a separate tariff for this purpose annually, whilst considering the average pooled power purchase cost, cross-subsidy charges, if any and service charges covering the prudent charged for the distribution licensees. For this purpose, the GOA Rules mention that energy accounting shall be done on a monthly basis and any renewable energy procured by an obligated entity, in excess of its RPO and through a medium other than the distribution licensees (such as direct third party sale or captive consumption), shall be accounted towards the RPO of such distribution licensee.

Notably, it is for the first time that provisions pertaining to RPO have received central government endorsement, which intends to streamline the RPO regulations and bring more certainty.

CONCLUSION

It is of note that the GOA Rules have brought the consumers' choice at the vanguard of the intended green energy reform in the power sector. Not only can the consumers with lesser sanctioned load now choose to procure renewable energy but any entity can switch to renewable energy sources for its 100% power consumption, in addition to being able to purchase renewable energy in excess of its RPO and being able to choose from solar and non-solar for meeting its RPO.

From increasing access to green energy and thereby promoting investment in the sector to helping India meet its ambitious target of 500 GW of non-fossil fuel energy by 2030, the GOA Rules will help the Indian Renewable Sector in more ways than one.

– Vardhikaa Sharma & Ratnadeep Roychowdhury

You can direct your queries or comments to the authors

¹ <https://www.pib.gov.in/PressReleasePage.aspx?PRID=1822010>.

² The Forum of Regulators (FOR) was constituted vide Notification dated 16th February, 2005 in pursuance of the provision under section 166(2) of the Electricity Act, 2003. The Forum consists of Chairperson of CERC and Chairpersons of SERCs. The Chairperson of CERC is the Chairperson of the Forum. See more at:

http://www.forumofregulators.gov.in/about_for.aspx

³ Charges payable to the distribution licensees under Section 42(4) of the Electricity Act for meeting the fixed cost incurred by the distribution licensees in undertaking their obligation to supply power to open access customers.

⁴ Section 2(17) of the Electricity Act; Distribution Companies or Licensees are entities authorised by way of a license by the respective SERC, to operate and maintain a distribution system and are responsible for supplying electricity to the consumers in their respective area of supply.

DISCLAIMER

The contents of this hotline should not be construed as legal opinion. View detailed disclaimer.

This Hotline provides general information existing at the time of preparation. The Hotline is intended as a news update and Nishith Desai Associates neither assumes nor accepts any responsibility for any loss arising to any person acting or refraining from acting as a result of any material contained in this Hotline. It is recommended that professional advice be taken based on the specific facts and circumstances. This Hotline does not substitute the need to refer to the original pronouncements.

This is not a Spam mail. You have received this mail because you have either requested for it or someone must have suggested your name. Since India has no anti-spamming law, we refer to the US directive, which states that a mail cannot be considered Spam if it contains the sender's contact information, which this mail does. In case this mail doesn't concern you, please unsubscribe from mailing list.