APP Comments on Draft Electricity (Amendment) Rules, 2022

INTRODUCTION

1. The Central Government has proposed to amend the Electricity Rules,2005. These Rules are mainly aimed to limit surcharge on open access consumers, ensure monthly adjustment of retail supply tariff for change in fuel and power purchase cost, Resource Adequacy Planning by the Discoms and LDCs, expedite concurrence of hydel schemes by CEA, introduce new rules regarding ESS, create a central pool of ISTS connected renewable energy sources by an authorized Intermediary Procurer designated by the Central Government to supply electricity to more than one distribution licensee at a uniform pooled tariff, and timely adjudication of disputes by the regulatory commissions.

These Rules have been framed under section 176 of the EA 2003. This section empowers the Central Government to make Rules **for carrying out the provisions of the Act**. It is, therefore, necessary to mention the provisions of the EA 2003 which are purported to be "carried out" by these Rules. It may be noted that each of the Existing Rules 2005 mentions about the Section, sub-section or clause of EA 2003 which is purported to be "carried out" by the Rule. The amending Rules do not mention any such provision. These Rules would not have binding force unless the corresponding provision of the Act is mentioned against the proposed Rules.

Perusal of these Rules indicate that these may be **"Good in Practice but bad in Law"**

DEFINITIONS

Rule 1 (c) defines "end procurer" as the persons to whom a license to undertake distribution and retail supply of electricity has been granted under Section 15 of the Act. Section 15 of the Act gives procedure to grant license. It is Section 14 under which the license is granted. Reference to Section 15 should be Section 14 instead.

Rule 1 (e) defines "intermediary procurer" as company, *designated* by an order made by the Central Government under these Rules as an intermediarybetween the End Procurer and the generating company to purchase electricity from generating companies and resell it to the End Procurer by aggregating the purchases or otherwise under Guidelines issued by the Central Government from time to time.

Purchasing power from generating company and reselling to Discom would amount to Trading, defined in Section 2(71) of the principal Act, which is a licensed activity under the Act and this provision would be in conflict with Section 12 of the Act unless such designated company is a trading licensee of the Appropriate Commission.

Rule 1 (g) defines "renewable energy sources" as hydro, wind, solar, biomass, bio-fuel, bio-gas, waste including municipal and solid waste, geothermal, tidal, forms of oceanic energy, and such other sources as may be notified by the Central Government from time to time. In this regard, one should consider that States are increasingly preferring to procure Round The Clock (RTC) or Hybrid power as a separate source of supply as a combination of solar and wind source enables supply of substantially higher quantum power in a more reliable and sustainable manner. Therefore it is requested that **"combination of any of the RE resources"** is added in the definition of renewable energy resources keeping overall interest of all the stakeholders concerned.

SURCHARGE ON CONSUMERS FOR OPEN ACCESS

2. Rule13. Provides that the Surcharge determined by the Commission u/s 86(1)(a) for open access consumers shall not be more than 20% of the average cost of supply. Thus, a ceiling on the surcharge has proposed. Similar provision had been made in the Tariff Policy 2006. This provision is in fact amending the principal statute through Rules which is not permissible.

   Further, as per Section 42 and 49 SERCs allow open access in distribution to certain consumers on payment of CSS as determined by the SERC. There is no provision in the Act under which SERC permits open access to certain category of consumers.

MONTHLY FPPAS FOR RETAIL SUPPLY

3. Rule 14 provides that the Appropriate Commission shall specify a formula for monthly adjustment of retail supply tariff for recovery of cost arising due to variation in prices of fuel or power purchase cost according the methodology given in these Rules. The formula for calculation of monthly Fuel and Power Purchase Adjustment Surcharge **("FPPAS")** shall be notified by the Commission within 90 days of notification of the Rules. Till a formula is specified by the Commission, the formula given in the rules shall apply. The distribution licensee shall carry out the monthly adjustment in tariff without taking approval by the Commission. However, the true up shall be carried out by the Commission after the end of the financial year. In case a Distribution Licensee fails to compute monthly FPPAS according to these rules, his right for recovery of the adjustment shall be forfeited.

This provision will help in timely recovery of fuel and power purchase escalation by the Discom. However, the provision to forfeit the adjustment surcharge should not be applicable in case there is reduction in FPPAS. In such cases of reduction in costs, if a Discom fails to compute monthly FPPAS, there should be a penal provision against it.

Section 61 (4) of EA 2003 requires the SERC to notify Regulations for fuel surcharge formula. Most of the SERCs have already notified such Regulations. This provision, though a good provision which would help Discoms, may interfere with statutory functions of the SERCs.

ACCOUNTING OF SUBSIDY

4. Rule 15 provides that the accounting of subsidy for the purpose of section 65 shall be carried by the distribution licensee according to the Standard Operating Procedure issued by the Central Government.

The purpose of the proposed rule is not clear. It is perhaps intended for introducing the Direct Beneficiary Transfer Scheme in future. However, the proposed rule appears to be in conflict with section 65 of EA,2003. According to Section 65 of EA 2003, the manner in which the subsidy provided by the State Government shall be implemented is required to be directed by the State Commission. The Central Government has no role in the Act in determining the manner in which the subsidy provided by the State Government is to be implemented to subsidize the targeted consumer or class of consumers.

DBT Scheme cannot be implemented unless Section 65 of EA 2003 itself is amended. Secondly, it is not clear under which provisions of the Act would the Central Government issue the Standard Operating Procedure. Without backing statutory provision any such procedure cannot have binding effect.

RESOURCE ADEQUACY

5. Rule 16 provides for Resource Adequacy Planning. **Resource Adequacy Panning ("RAP") has not been defined in the rules. It is suggested that same may be defined**. It has been proposed that the Regulations for RAP shall be specified by the Appropriate Commission according to the guidelines issued by the Central Government in consultation with the CEA and the Model Regulations framed by the Forum of Regulators.

   Resource Adequacy by distribution licensees has assumed more importance with increased integration of variable renewable energy. The powers to regulate the electricity purchases and procurement process by a distribution licensee has been conferred on the State Commission under section 86(1)(b) of the Electricity Act,2003. Resource Adequacy Planning is a part of power procurement process which is under the domain of a State Commission.

   If, however this Rule is retained, it is requested that the part of the clause having the words "consultation with the distribution licensee" is replaced by "consultation with all the concerned stakeholders" for betterment of operational planning and co-ordination aspects since Resource Adequacy also impacts other stakeholders such as generating companies and transmission licensees.

CONCURRENCE FOR HYDRO PROJECTS BY CEA

6. Regulation 17 prescribes the time limit for grant of concurrence by the CEA under section 8 of the Act for hydro schemes and pumped storage project (PSP) scheme. Time limit of 150 days has been prescribed for grant of concurrence to hydro projects and 90 days for PSP.

The objective of the proposed amendment is to reduce the time required for the CEA's concurrence u/s 8 of the Act of hydel schemes including PSP which is required to be promoted in view of large integration of VRE.

ENERGY STORAGE SYSTEM

7. As per rule 18, Energy Storage System ("ESS") has to be a part of power system defined in section 2(50) of the Act. Again, it would amount amending the parent statute through Rules which is not permissible. Act can only be amended with express approval of the both houses of the Parliament. The status of ESS shall be as per its application area, i.e., generation or transmission or distribution. ESS can be developed, owned, leased and/or operated by a generating company, a transmission licensee or a distribution licensee or system operator or a standalone service provider. It will have same legal status as its owner.

8. The standalone ESS will be a delicensed activity but will be required to be registered with the CEA. Standalone ESS has not been defined. Section 4 of the Act deals with standalone systems and would indicate standalone systems as system not connected to grid. It is not clear how a standalone ESS would be charged if not connected to grid or any other generating station. Needs clarity.

9. **The treatment of energy imported by the ESS for storage through open access is a grey area. Some regulators feel that import of energy through open access by a standalone ESS should be treated as drawl of a consumer through open access on which surcharge and additional surcharge is applicable. Levy of surcharge on import of energy by ESS will make it unviable. It is felt that ESS does not consume energy for own use but stores it in another form viz., chemical energy in a battery storage or potential energy in PSS. The stored energy is again converted back into electrical energy and injected back into the grid whenever it is required. In this process some energy is also lost. It is suggested that the rules may prescribe that no surcharge or additional surcharge is to be levied on the energy import by an ESS through open access.**

IMPLEMENTATION OF UNIFORM RE TARIFF FOR CENTRAL POOL

10. Rule 19 is mainly to create a central pool of ISTS connected renewable energy sources by an authorized Intermediary Procurer designated by the Central Government to supply electricity to more than one distribution licensee at a uniform pooled tariff. The Intermediary Procurer will enter into PPA with more than one renewable energy generators selected through tariff based competitive bidding process u/s 63 for which due approval will be taken by the Intermediary procurer. The Intermediary will also enter into a Power Supply Agreement with the distribution licensee to supply electricity from the renewable energy sources at the pooled tariff for which approval will be taken by the distribution licensee from the concerned State Commission. The pooled tariff will be computed by the Intermediary Procurer according to the methodology prescribed in the Rules. The Intermediary shall get trading charges as specified or determined by the Appropriate Commission and in the absence of charges specified or determined by the Commission, the trading charges shall be 7 p/kWh.

11. **Proviso under Rule 19(1) stipulates that such central pool shall be for 5 years, and every 5 years a new central pool shall be formed. However, the Rules also provide for new projects to be added to the Central pool as and when they are commissioned and provide for pool tariff to be determined on monthly basis. Hence it is not clear as to why the central pool shall remain for 5 years and why a new central pool shall be formed after every 5 years. Appropriate clarity may be provided in this regard, especially pertaining to the difference between the old and the new pools and whether all projects from the old pool will get carried forward to the new pool as long as they are still operational.**

12. **Difficulties may be experienced in scheduling of projects in a pool. In a pool there may be projects connected to different sub-stations and which may be located in different regions. Therefore, each project has to be scheduled individually but the buyers have to give schedule from the cumulative availability in the pool. This may create difficulty in scheduling. Appropriate mechanism may be provided to remove the difficulty.**

13. **Difficulties are anticipated in taking approval from the State Commission u/s 86(1)(b) under which the price of electricity is also required to be approved by the Commission. In the central pool, the pooled tariff will change whenever a new**

project is added in the pool. Thus, the pooled price shall vary with every addition of a RE project to the pool.

14. **During implementation of Uniform RE Tariff through Central Pool, it would be vital to ensure that all the contractual rights of the generators are protected. Accordingly it is requested that Clause 19(c) may be reworded as following:**

*"**All** The Contractual Obligations between Power Generators & Intermediary Procurer and Intermediary Procurer & End Procurer **including but not limited to** ~~such as~~ liquidated damages, penalties, extension charges, dispute resolutions shall be governed by respective bidding document including Power Purchase Agreements, Power Sale Agreements and will have no bearing on Uniform Renewable Energy Tariff"*

15. **It is also requested that the Hon'ble Ministry may consider explicitly mentioning that the payments by Intermediary Procurer to Power Generators, in accordance with the terms of the Contract, shall in no manner be impacted due to denial or delay in payments from the End Procurer to the Intermediary Procurer**

TIMELY DISPOSAL OF ADJUDICATION OF DISPUTES U/S 79(1)(f) and 86(1)(f) BY THE COMMISSIONS

16. A new rule has been proposed to be added under Rule 10, providing for disposal of cases relating to adjudication of disputes between the licensees and the generating companies by the Central and the State Commissions. Under the new rule the Commissions shall dispose of such matters within 120 days which can be extended by 30 days for reasons recorded in writing. However, if final order cannot be issued for some reason to be recorded in writing, an interim order shall be issued within the above stipulated time. Rule 10(2) provides that in case final order cannot be passed by the Commission within 90 days or 180 days as the case may be, the affected party may approach the APTEL.

17. **Under the proposed Rule 10(1), "79(f) and 86(f)" may be corrected as "79(1)(f) and 86(1)(f)". Expression "within 90 days or 180 days as the case may be" used in**

Rue 10(2) is not clear and is required to be explained. We feel that it should be 120 or 150 days as the case may be.

18. **Section 79(1(f) and 86(1(f) has provision for adjudication of dispute by the Commission himself or to refer the dispute for arbitration. The proceeding under arbitration of dispute has to be carried out as per the provisions of Arbitration and Conciliation Act,1996 and period of disposal specified in the proposed rule cannot be applied to such disputes referred by the Commission for arbitration**.

19. Section 111 of the EA,2003 provides for filing of an appeal by a person aggrieved by an order made by the Appropriate Commission under the Act before the Appellate Tribunal for Electricity. Therefore, a direct appeal cannot be filed before the APTEL when no order has been passed by the Appropriate Commission. In order to clarify, reference to Section 121 may be made and Rule 10(2) may be read as "if the final order has not been passed by the appropriate Commission, within one hundred and twenty days or one hundred and fifty days, as the case may be, the affected party may approach the Appellate Tribunal for Electricity under Section 121 of the Act for appropriate relief".

ADDITIONAL CLAUSE PROPOSED:

With power being a concurrent subject, there have been some instances where State agencies have been unwilling to allow usage of its resources (solar/wind/other RE resources) for the supply of power to other States. It is requested if Ministry of Power can add an enabling provision directing applicable nodal agencies to provide requisite approvals to the renewable projects which are proposed to be connected to a ready to use central substation as on the date of notification these rules. This would help to remove ambiguity surrounding ISTS based projects where a central substation has already been executed for ready usage.