

No. 23/7/2023-R&R
Government of India
Ministry of Power

Shram Shakti Bhawan, Rafi Marg,
New Delhi, 28th June, 2023

To

1. Secretary, MNRE, New Delhi.
2. Chairperson, Central Electricity Authority, SewaBhavan, R.K. Puram, New Delhi
3. Secretary, Central Electricity Regulatory Commission (CERC), New Delhi
4. Principal Secretaries/Secretaries (Power/Energy) of all State Governments/UTs
5. Secretaries of All State Electricity Regulatory Commissions/JERCs.
6. Chairman/CMDs of all PSUs under administrative control of Ministry of Power
7. CMD, SECI, New Delhi
8. CMDs/MDs of Discoms/Gencos of all State Governments
9. CMD, IEX LTD New Delhi & MD/CEO, PXIL, Mumbai
10. DG, Association of Power Producers, New Delhi.
11. President, FICCI, House No. 1, Tansen Marg New Delhi
12. President, CII, New Delhi
13. President, PHDCCI, New Delhi
14. ASSOCHAM, Chanakypuri, New Delhi
15. Member, PRAYAS Energy Group, Pune
16. DG, Electric Power Transmission Association (EPTA), New Delhi
17. Chairman Indian Wind Power Association, New Delhi
18. Chairman, Indian Wind Turbine Manufacturers Association, New Delhi
19. Director General, National Solar Energy Federation of India (NSEFI), New Delhi
20. DG, Solar Power Developers Association.

Subject: Draft Electricity (Amendment) Rules, 2023- Reg.

Sir/Madam,

I am directed to state that Electricity Rules, 2005 were notified by the Central Government on 08.06.2005. These Rules have been amended from time to time i.e. on 26.10.2006, 31.12.2020 and 29.12.2022. A copy of the principal Rules and its amendments is enclosed.

2. Ministry of Power has carried out a series of reforms in the power sector, which have facilitated ease of doing business, ease of living, protecting rights of electricity consumers and have also kept the price of power at reasonable rates.

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3. In order to remove difficulties/challenges faced by various entities and to facilitate development of the power sector some more reforms are proposed. The issues and the reforms proposed to resolve them are mentioned below:

i) Some of the stakeholders have raised the issue of 'Requirement of Transmission license for Bulk Consumer to connect to Inter-State Transmission System', as per provisions in the Electricity Act, 2003. Request was received to allow these large consumers to like Green Hydrogen manufacturers to allow them to establish, operate or maintain dedicated transmission lines without the requirement of licence. Further, through the removal of difficulty 5th order dated 8th June, 2005, the Generation Companies and Captive Generators were allowed to establish, operate or maintain dedicated transmission lines without the requirement of license. Similarly, it is proposed that the facility may be allowed for the bulk consumers of having specified quantum of load and Electricity Storage Systems (ESS). It is felt that by allowing such facility a new category of Bulk Consumers would emerge in the country, benefiting from more affordable electricity and enhanced grid reliability. A new rule is proposed to make provision that no transmission licence will be required for the dedicated transmission line to connect large consumer (like Green Hydrogen Producer) and ESS.

ii) Open Access is one of the key features of Electricity Act, 2003. However due to very high Open Access charges the concept of Open Access could not be implemented to the desired level. The issues related to Open Access have been discussed at various forums. Many stakeholders have raised issues regarding prohibitive rate of Open Access charges levied by different states. It is felt that the Open Access charges needs to be reasonable throughout the country. This will facilitate the bulk consumers in getting electricity through Open Access. This will facilitate the bulk consumers like industries in getting electricity through Open Access at reasonable rates. To rationalise the open access charges new rules are proposed to prescribe methodology for computing various open access charges.

iii) To ensure financial sustainability of the power sector, it is necessary that the tariff is cost reflective and all the prudent cost is pass through. However, it has been observed that in many States there is large gap in approved ARR and estimated revenue on approved tariff. To discourage such practice there is need to make statutory provisions to avoid such gap. It is also imperative that liquidation of any such gaps in revenue required and estimated approved tariff is done in a time bound manner. New rules are proposed to ensure that revenue gap/regulatory assets is not created except in extraordinary circumstances and to provide for time bound liquidation of the same.

iv) Hon'ble Supreme Court's vide judgment dated 20.04.2023, passed in Civil Appeal No. 11095 of 2018 (GMR Warora Energy Ltd versus Central Electricity Regulatory Commission and Ors.), has inter-alia made observations on non-essential litigations and their cost implications to the consumers as well as requirement of timely payment of dues. Further, the Hon'ble Supreme Court has advised this Ministry to evolve mechanism for timely payment and to avoid unnecessary litigations. In compliance of the aforesaid judgment dated 20.04.2023, it is proposed to frame Rule to discourage frivolous litigations before Appellate Tribunal for Electricity and higher courts. It is proposed to mandate upfront part payment of dues before filing an appeal before the Appellate Tribunal for Electricity or higher court in order to discourage frivolous litigations.

4. Accordingly, draft Electricity (Amendment) Rules, 2023 have been prepared and are enclosed herewith as Annexure. It is requested that the comments on the proposed draft amendment Rules may please be provided to this Ministry within 30 days from the date of this letter, i.e. by 28.07.2023. The comments may also be emailed at debranjan.chattopadhyay@nic.in and narendra.kumar65@nic.in.

5. This issues with the approval of Competent Authority.

Yours faithfully,

Encl: as above


(Narendra Kumar)
Director
Ph: 011-2373 6275

Copy for information to: PS to Hon'ble Minister for Power and NRE, APS to MoSP, Sr. PPS to Secretary (P), PSO to CE (R&R), Ministry of Power.

Copy to: Technical Director, NIC Cell for uploading on MOP's website under "New Notices" with the heading of "**Seeking comments on draft Electricity (Amendment) Rules, 2023.**"

[DRAFT]

[To be published in the Gazette of India, Extraordinary, Part-II, Section 3, Sub-section (i)]

GOVERNMENT OF INDIA

MINISTRY OF POWER

NOTIFICATION

New Delhi, dated the June, 2023

G.S.R. (E).- In exercise of the powers conferred by Section 176 of the Electricity Act, 2003 (36 of 2003), the Central Government hereby makes the following rules, further to amend the Electricity Rules, 2005, namely:-

1. (1) These rules may be called the Electricity (Amendment) Rules, 2023.

(2) They shall come into force on the date of their publication in the Official Gazette.

2. In the said Rules, after Rule 21, the following Rule shall be inserted, namely:-

22. Establishment, operation and maintenance of dedicated transmission lines: A generating company or a person setting up a captive generating plant or an Energy Storage System or a consumer having load of not less than twenty five (25) MW in case of Inter State Transmission System and ten (10) MW in case of State Transmission System shall not be required to obtain license under the Act for establishing, operating or maintaining a dedicated transmission line to connect to the grid if such company or person or consumer complies with the Regulations, technical standards, guidelines and procedures issued under the provisions of the Electricity Act, 2003.

23. Open Access Charges:

i. **Wheeling charges:** Wheeling charges shall be computed as per following formula:

Wheeling Charge = Aggregate Revenue Requirement towards wheeling/Energy wheeled during the year

- ii. **Charges for using network of State Transmission Utilities (STU):**
The charges for using STU network by the consumers availing short-term open access shall not be more than one hundred ten percent (110%) of the charges levied on consumers using STU network on long-term basis.
- iii. **Additional Surcharge:** The additional surcharge levied on any open access consumer shall not be more than fifty percent of the wheeling charges for that category of consumers.

Provided that for a long term open access consumer, the additional surcharge to that consumer shall be linearly eliminated within five years from the date of grant of open access.

Explanation: For the purpose of this Rule, 'long term' means a period not less than seven years.

24. Gap between approved ARR and estimated annual revenue from approved tariff:

The tariff shall be cost reflective and there shall not be any gap between approved Annual Revenue Requirement (ARR) and estimated annual revenue from approved tariff except under natural calamity conditions.

Provided that such gap, created if any, shall not be more than three percent (3%) of the approved ARR.

Provided also that such gap along with the carrying costs at the 'base rate of Late Payment Surcharge' as specified in the Electricity (Late Payment Surcharge and Related Matters) Rules, 2022 shall be liquidated in maximum three numbers of equal yearly installments from the next financial year.

Provided further that any gap between approved Annual Revenue Requirement (ARR) and estimated annual revenue from approved tariff existing on the date of notification of these Rules, along with the carrying costs at the 'base rate of Late Payment Surcharge' as specified in the Electricity (Late Payment Surcharge and Related Matters) Rules, 2022 shall be liquidated in maximum seven numbers of equal yearly installments starting from the next financial year.

25. Appeal before the Appellate Tribunal for Electricity:

Any person appealing against the order made by the Appropriate Commission under the Act, shall, while filing an appeal before Appellate Tribunal for Electricity, pay at least fifty per cent. (50 %) of the payable amount as per the order of the Appropriate Commission.

Provided that in case of matters related to 'Change in Law' as defined in Electricity (Timely Recovery of Costs due to Change in Law) Rules, 2021, such payment shall be, seventy five per cent. (75 %) of the payable amount as per the order of the Appropriate Commission.

Provided also that after final order of the Tribunal on the appeal, any excess amount paid by the appellant to the other party(ies) at the time of filing the appeal shall be refunded along with the interest at the 'base rate of Late Payment Surcharge' as specified in the Electricity (Late Payment Surcharge and Related Matters) Rules, 2022, within ninety (90) days from the date of the Order passed by Appellate Tribunal for Electricity (APTEL) or in accordance with the order by the APTEL.

Provided also that where the APTEL or the Supreme Court deems the appeal to have been frivolous and without any cogent ground whatsoever the rate of Late Payment Surcharge shall be 18 per cent.
