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The Corporate and Regulatory Affairs (CRA) E-Bulletin is an initiative of ASSOCHAM's Department of Corporate, Legal and Regulatory Affairs. The aim of the E-Bulletin is to provide a platform for stakeholders to bring forth the evolving dynamics of corporate and regulatory sectors, challenges and plausible way forward. The quarterly E-Bulletin shall engage with the stakeholders on various contemporary themes and market dynamics.

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Demystifying Energy Storage Systems under the Electricity (Amendment) Rules 2022

-Shivanshu Thaplyal Partner, & Rishabh Sharma, Associate, Khaitan & Co.

The Ministry of Power (MoP) amended the Electricity Rules 2005 on 29 December 2022 by notifying the Electricity (Amendment) Rules 2022 (Amendment Rules). This introduces rules on a range of areas inter alia such as applicable surcharge payable by open access consumers, timely recovery of power purchase costs by distribution licensee, subsidy accounting, resource adequacy, development of hydro power, energy storage system and implementation of uniform renewable energy tariff for central pool. The MoP has also revised the provisions pertaining to dispute resolution by enforcing a time-bound resolution of disputes by the appropriate commission.

In this article, we discuss the introduction of Energy Storage Systems (ESS), as a part of power systems, in terms with Section 2 (50) of the Electricity Act 2003 (Act), by way of the Amendment Rules.

Understanding Energy Storage Systems

The Amendment Rules provide that ESS will be a part of power systems and will be treated as a de-licensed activity. The aforesaid is at par with a generating company in line with the provisions of Section 7 of the Act. Therefore, there is now a significant incentive for private players to invest in ESS infrastructure. ESS could either exist as an independent energy storage system or network asset, or could co-exist with generation, transmission or distribution system. ESS may be owned, developed, leased or operated by a

generating company, a transmission licensee, a distribution licensee, a system operator or an independent energy storage service provider.

Typically, ESS would be accorded status depending upon its application area viz generation, transmission and distribution. In case the ESS is owned and operated by and co-located with a generating station, transmission licensee or distribution licensee, ESS will have the same legal status as that of its owner, i.e., it would qualify as a part of the generation unit, transmission network or distribution network, as the case maybe. If the ESS is not co-located but owned and operated by a generating station or distribution licensee, the legal status of the ESS would still be that of the owner. It is pertinent to highlight herein that the proviso to Rule 18 (4) of the Amendment Rules specifically excluded transmission licensee from its ambit, thereby not extending the status of transmission licensee on off-site ESS owned by the concerned transmission licensee. This shows that the legislators intended to give ESS a purposive status, i.e., linking the status of the ESS with the purpose of their establishment. However, for the purpose of scheduling and dispatch and other matters, ESS would be treated at par with a separate storage element.

The developer or owner of the ESS will have the option to sell, lease or rent out the storage space of the ESS, in whole or in part, to any generation, transmission or distribution utility or to any load

despatch centre. However, the owner of the ESS may use part or whole of the storage space for buying and storing power, and subsequently selling or supplying the stored power to any third-party.

Though the independent energy storage will be a delicensed activity, if the owner, developer, tenant, lessee or user seeks to operate the ESS as an independent energy storage system, it must be registered with the Central Electricity Authority (Authority) and the capacity of such ESS will have to be verified by the Authority.

Lacunas in the ESS mechanism

Overall, Amendment Rules have laid a comprehensive ESS mechanism. However, there are still some areas that could have been addressed. The Amendment Rules allow the owner of the ESS to use part or whole of the storage space for buying and storing power, and subsequently selling or supplying the stored power. However, the Amendment Rules fail to clarify and contemplate on whether such an activity would qualify as trading of power, in terms with Section 2 (71) of the Act. If such activity were to qualify as trading of power, then a pertinent question to reckon with is the applicability of power trading related laws to ESS owners and operators, and its extent thereof.

The Amendment Rules contemplate on scheduling and despatch of power from standalone or independent ESS but does not include any provision for formulation of guidelines or procedures for scheduling and despatching of power from standalone or independent ESS. Also, it has been specified that for the purpose of scheduling and dispatch and other matters, ESS would be treated at par with a separate storage element, but the Amendment

Rules have not specified or defined 'a separate storage element'.

The Amendment Rules also state that if the owner, developer, tenant, lessee or user seeks to operate the ESS as an independent energy storage system, it must be registered with the Authority and the capacity of such ESS will have to be verified by the Authority. While this is a germane step to ensure and track the sale, lease or rent out of the storage space of the ESS, the same requirement should have been made applicable to all models of ESS, including ESS co-located with generating station, transmission licensee or distribution licensee.

Key takeaways

ESS is one of the most integral emerging mechanisms in the power sector, acting as a key catalyst in all the principal stages of power generation – generation, transmission and distribution of power. ESS would be of immense use in power generation from renewable sources if it is co-located with a renewable generating station or unit, as it can aid in bridging the deviation caused between the scheduled generation and the actual generation of power due to the infirm nature of renewable energy, i.e., its dependency upon variable natural factors, such as wind speed and solar irradiation, which causes the actual generation to vary from the scheduled generation. ESS can also play a major role in maintaining grid security thereby acting as a key transmission asset. Last, ESS can also aid distribution licensees in honouring their power supply commitments in case there is a shortage of generation from contracted sources, consequently averting scheduled power-cuts.

In view of the above and in consideration to the increasing reliance on renewable energy, the

introduction of ESS, as a part of power systems, through Amendment Rules would further assist in mitigating the issues pertaining to deviation in renewable power generation and banking of power. By incorporating rules on ESS, Amendment Rules have acted in furtherance to India's commitment at 21st session of the Conference of the Parties (COP 21), in Paris 2015, of meeting 40% of total power generation requirements from renewable sources by the year 2030. A robust ESS mechanism would also address a range of pressing issues prevalent in the power sector – grid insecurity issues, grid frequency regulation, unwarranted power-cuts, emergency power back-up, among others.

This initiative from the MoP will not only boost the renewable power integration thereby providing us with clean, green and sustainable energy but would also aid in India's quest of reducing carbon footprints. However, incorporation of such rules would not solely achieve the intended purpose and it would be critical to see how the government and concerned regulatory bodies will be implanting these Amendment Rules and consequently providing a sufficient national level ESS infrastructure to cater and address the aforementioned needs and concerns respectively.

About the Authors:

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Shivanshu's primary sector focus is Power (both conventional and non-conventional), Transport, Urban Infrastructure, Ports and Mining, with a specialisation in handling Public Private Partnership projects. Shivanshu actively advises clients on bidding for infrastructure projects as also on procurement laws in India. Shivanshu also has significant experience in corporate transactions and has represented a number of clients in domestic and transnational mergers and acquisitions, takeovers and joint ventures and corporate structuring transactions.



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