

## ERGO

*Analysing developments impacting business*

### IMPACT OF ELECTRICITY AMENDMENT RULES, 2024 ON FINANCING

31 January 2024

#### *Introduction*

On 10 January 2024, vide a notification issued by the Ministry of Power, Government of India (MoP) in terms of the powers conferred under Section 176 of the Electricity Act, 2003 (Act), MoP has made certain amendments to Electricity Rules, 2005 (Amendment Rules).

*The key amendments of the Amendment Rules have been summarised as follows:*

- a) **Rule 21 inserted:** The Amendment Rules exempt the following persons from the mandatory requirement of procurement of a license under the Act for establishment, operation or maintenance of a dedicated transmission line to connect to the grid to any of the following having load of not less than 25 (twenty five) megawatt in case of interstate transmission system and 10 (ten) megawatt in case of intrastate transmission system:
  - i. generating company; or
  - ii. a person setting up a captive generating plant; or
  - iii. an Energy Storage System; or
  - iv. a consumer,provided they comply with the regulations, technical standards, guidelines and procedures issued under the Act.
- b) **Rule 22 inserted:** The Amendment Rules cap various open access charges to ensure rationalisation and prevalence of competitive rates. The charges to be capped are as follows:
  - i. Wheeling Charges: To be calculated on a formula based on annual revenue requirement towards wheeling divided by energy wheeled during that year;
  - ii. Charges for using of State Transmission Utilities: Charges for using state transmission utility on short term basis have been capped at 100% (one hundred percent) of the charges levied on consumers using state transmission utility on a long-term basis or on General Network Access Basis;
  - iii. Additional Surcharge: The additional surcharge levied on Open Access Consumer has been capped at per unit fixed cost of the power purchase of the concerned distribution licensee, provided that for availing General Network Access or Open Access there shall be a linear reduction in the additional surcharge from the value in the year such access was granted, to eliminate the additional surcharge within four years from the date of grant of such access. The

limited exception for levying such additional surcharge shall be to the extent of contract demand being maintained with the distribution licensees to a consumer who has not been a distribution licensee till date.

- c) **Rule 23 inserted:** To make the revenue mechanism more transparent the Amendment Rules prescribe that there shall be no gap between the estimated annual revenue and Annual Revenue Requirement (ARR) and the tariff shall at all times, be cost reflective, except under natural calamity and in the event there is a resultant gap, , the same shall not be more than 3% (three percent) of the approved ARR, provided that such gap alongwith the Late Payment Surcharge under the Electricity (Late Payment Surcharge and Related Matters) Rules, 2022, shall be liquidated in not more than 3 (three) equal yearly instalments.

### **Effect on Financing:**

As per Section 12 of Act, no person shall transmit, distribute or undertake trading in electricity unless authorised by license under Section 14 or exempted under the provisions of Section 13 of the Act. The Amendment Rules with the aim of promoting ease of setting up of transmission lines and fastening the process of grid connectivity by reducing compliances may lead to following benefits:

- establishment, operations and maintenance of transmission lines by power project players, without the requirement of obtaining a license under the Act makes setting up of Energy Storage System unchallenging;
- cap in the open access charges shall prove beneficial for small and medium scale power projects and we hope to see more activity involving setting up and funding of open access power projects;
- the reduction in levy of additional surcharge on Open Access Consumers may widen the ambit of consumers for the power and transmission project companies and open a bigger market of power purchasers/consumers enabling the power project companies to obtain financing with ease;
- the proposed amendments will also lead to a surge in procurement trends among C&I consumers;
- the compliance mechanism of licensing being reduced under the Amendment Rules, for players setting up power generating plants (above 25 megawatt for interstate and ten megawatt for intrastate) will have a direct positive impact on the security creation timelines under the financing structure of such projects; and
- the ease of setting up projects facilitated by the Amendment Rules will lead to a bare minimum requirement for the lenders' independent engineers to provide additional certifications and diligence of requisite licenses/permits under the Act, thereby smoothening the financing and diligence process.

### **Conclusion**

The Amendment Rules, represent an optimistic step towards a more accommodating as well as inexpensive power market in the country and by stimulating dedicated transmission lines and enabling open access, the Amendment Rules tend to create an environment for enhanced healthy competition and potentially cut-down of electricity prices for the consumers.

It is prudent to note that Amendment Rules have been introduced to accelerate India's renewable energy goals for net zero emission by 2070 along with reduction of high transmission and distribution losses. The Amendment Rules along with the Guidelines for Encouraging Competition in Development of Transmission Projects shall together have the effect of improving the technology and infrastructure of India's transmission ecosystem and decrease of energy losses.

However, the long-term accomplishment of the measures contemplated under the Amendment Rules will depend on the efficient implementation and by making sure that the mechanism remains transparent and there is accountability within the sector; cautious

evaluation will be vital at all times to ensure that the intended benefits of these Amendment Rules are realized.

- *Siddharth Srivastava (Partner), Henna Vadhera (Principal Associate), Abhilash Kumar (Senior Associate) and Shikha Mohini (Associate)*

For any queries please contact: [editors@khaitanco.com](mailto:editors@khaitanco.com)