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JUNE 2024

Tamil Nadu Electricity Regulatory Commission Draft Regulations: Verification of Captive Status For Generating Plants And Consumers

Introduction

The Tamil Nadu Electricity Regulatory Commission (“TNERC”) vide notification dated June 24, 2024, issued the Draft TNERC (Verification of Captive Status of Generating Plants/Consumers) Regulations, 2024 (“Draft Regulations”), a pivotal step to ensure compliance with captive power norms under the Electricity Act, 2003, and Electricity Rules, 2005. The Draft Regulation establishes a transparent framework for verifying the captive status of generating plants and consumers. Public comments were invited until July 15, 2024.

Overview of the Draft Regulations

The Draft Regulations address the growing need to regulate Captive Generating Plants (“CGPs”), which allow industries and consumers to generate electricity for self-use, reducing grid reliance and costs. Misuse of captive status to evade cross-subsidy surcharges and open access charges has prompted TNERC to establish a standardized verification process, reinforced by the Supreme Court’s ruling in *Dakshin Gujarat Vij Company Ltd. v. Gayatri Shakti Paper and Board Ltd.* (Civil Appeal Nos. 8527-8529 of 2009, dated October 9, 2023). Applicable to all CGPs and captive users in Tamil Nadu, including those using renewable or conventional energy via open access or dedicated lines, the Draft Regulations ensures alignment with national energy policies.

Key Provisions of the Draft Regulations

Scope and Applicability

- The Draft Regulations applies to all CGPs, Special Purpose Vehicles (“SPV”), and captive users, including single users, cooperative societies, partnership firms, associations of persons throughout the State of Tamil Nadu.
- The interstate CGPs are verified by the Central Electricity Authority.

Verification Criteria

- **Ownership:** Captive users must hold at least 26% equity with voting rights (individually for single users or collectively for SPVs/cooperatives) throughout the financial year i.e., April 1 to March 31
- In case of change in the shareholding pattern during the financial year, a weighted average is applied to ensure compliance with the 26% threshold.

- **Consumption:** Users must consume at least 51% of the net electricity generated annually, proportional to their shareholding within a $\pm 10\%$ variation for group captive arrangements.
- **Proportionality Test:** Mandated by the Hon'ble Supreme Court to prevent "gaming" (e.g., disproportionate consumption by minority shareholders), ensuring consumption aligns with ownership to prevent misuse.

3. Meeting and reporting

As per the Draft Regulations, separate energy meters with automated meter reading facilities are required for each generating unit. Further, data on generation and consumption must be reported regularly to the distribution licensee.

4. Verification Process

Document Submission:

- By April 30 each year, CGP operators and captive users must submit detailed records, including shareholding certificates, audited financial statements, and generation/consumption data, as prescribed in Formats I to V.
- Any changes in shareholding or ownership during the financial year must be notified to the distribution licensee and TNERC within 15 days, accompanied by certified documentation (e.g., Chartered Accountant attestation, Format I).

Monitoring

- The distribution licensee will monitor CGPs annually, after the end of the financial year, for compliance with consumption and equity share-holding criteria. For newly commissioned plants, for the first year, the start date is the the open access date, receipt of the wheeling agreement, or commissioning date. For the subsequent years, generation from April 1st to March 31st of a financial year will be considered for determining captive status.

Compliance Audits:

- TNERC or designated distribution licensees may conduct random inspections of CGPs and captive user facilities to verify compliance with regulatory requirements).
- Audits focus on metering accuracy, data integrity, and adherence to ownership and consumption thresholds, ensuring ongoing regulatory oversight.

Consequences of Non-Compliance

- Failure to meet criteria results in loss of captive status, incurring cross-subsidy surcharges, additional surcharges, and open access charges.
- The distribution licensees are empowered to issue demand notices that include detailed calculations demonstrating the consumers' non-compliance with the captive status requirements.
- Users must deposit an unconditional bank guarantee equivalent to surcharges for 51% of the prior year's consumption.
- Charges must be paid within one month of invoicing, with detailed calculations provided by licensees.

Dispute Resolution:

- In case of any dispute between the Distribution Licensee and Captive Power producers / users regarding captive status and payment of surcharges, the aggrieved party may prefer a petition before the TNERC for adjudication

Conclusion

The Draft Regulations establish a comprehensive framework to ensure that CGPs and their users adhere to the ownership and consumption criteria mandated by the Electricity Act, 2003, and Electricity Rules, 2005. By introducing rigorous verification processes, mandatory metering standards, and real-time monitoring mechanisms, TNERC aims to curb misuse of captive status, promote equitable access to power, and strengthen Tamil Nadu's renewable energy ecosystem. Stakeholders, including CGP operators, captive users, and distribution licensees, must proactively engage with the draft, submit feedback by July 15, 2024, and prepare for compliance to safeguard their operational and financial interests. As these regulations move toward finalization, they signal a pivotal step toward a transparent and sustainable energy future in Tamil Nadu.

Central Electricity Regulatory Commission (Connectivity and General Network Access to the inter-State Transmission System) (Second Amendment) Regulations, 2024

Introduction

On June 19, 2024, the Central Electricity Regulatory Commission (“CERC”) notified the **Central Electricity Regulatory Commission (Connectivity and General Network Access to the inter-State Transmission System) (Second Amendment) Regulations, 2024**, amending the CERC (Connectivity and General Network Access to the inter-State Transmission System) Regulations, 2022 (“**Principal Regulations**”). This newsletter provides factual overview of the key changes introduced in the amendments.

Key Amendments:

1. **Renewable Energy Implementing Agency (REIA)**

- A new clause (ag-i) added to Regulation 2.1 defines REIA as an entity designated by the Central or State Government to act as an intermediary procurer.
- REIA selects and purchases power from Renewable Energy Generating Stations (“REGS”) for sale to distribution licensees or other entities, including Central or State Government departments for their own renewable energy consumption.
- Power procurement by REIA must comply with guidelines issued under Section 63 of the Electricity Act, 2003.

2. **Application Scrutiny for Connectivity and General Network Access (GNA)**

- Under amended Regulation 3.5, the Nodal Agency must notify applicants of minor deficiencies in Connectivity or GNA applications within 10 working days of receipt, based on the order of application date and time.
- Applicants must rectify minor deficiencies within 7 days, failing which the application will be closed. 20% of the application fee will be forfeited, and 80% will be refunded

within 15 days.

- Rectifying minor deficiencies within the specified time retains the original application date and time.

3. Connectivity Criteria for North Eastern Region (NER) and Sikkim

- A new clause (f) added to Regulation 4.1 specifies a minimum installed capacity of 25 MW (individually or in aggregate) for Connectivity applications in NER and Sikkim, overriding clauses (a) to (c) of the regulation.

4. Land Requirements for Connectivity Applications

Sub-clauses (b) and (c) of Regulation 5.8 (clauses (vii) and (xi)) are revised to require:

- i. A **Registered Title Deed** proving ownership, lease, or land use rights for at least **50% of the land** required for the project capacity.
- ii. In states where the State Government allocates land to a Nodal Agency for renewable energy projects, a **Government Order** with an **Advance Possession Letter** in the applicant's name is acceptable, provided it covers **50% of the required land**.
- iii. Alternatively, applicants may submit a Bank Guarantee: (i) For capacity up to 1000 MW: **Rs. 10 lakh per MW**; (ii) For capacity above 1000 MW: **Rs. 100 crore + Rs. 5 lakh per MW** for additional capacity. This shall be subject to Regulations 11A and 11B.

5. Timelines for Connectivity Approvals

- Regulation 7.1 extends the timeline for issuing an in-principle Connectivity grant from 30 days to 60 days.
- Regulation 7.2 extends the timeline for decisions involving transmission system augmentation from 60 days to 90 days.

6. Land Documentation and Financial Closure Requirements

i. Land Documentation (Regulation 11A):

- Entities such as REGS (excluding hydro), Energy Storage Systems (ESS, excluding Pumped Storage Projects), and Renewable Power Park Developers must submit proof of ownership, lease, or land use rights for 50% of project land within: (i) 18 months from the in-principle Connectivity grant, or (ii) 12 months from the final Connectivity grant, whichever is earlier.
- Upon submission, any Bank Guarantee provided in lieu of land documents will be returned within 7 days.

ii. Financial Closure (Regulation 11A):

- Applicants must achieve financial closure 6 months before the Scheduled Commercial Operation Date ("SCOD") or Connectivity start date, whichever is later.
- Proof, such as a loan sanction letter or board resolution for internal funding, must be submitted to CTU within 15 days of achieving closure.
- For projects with extended SCODs (approved by REIA or relevant authority), the financial closure deadline may be extended up to 12 months from the original SCOD.
- Entities transitioning from sub-clauses (b) or (c) to sub-clause (a) of Regulation 5.8 (xi) must also meet this timeline.

7. Connectivity Conversion

- Under Regulation 11A, Clause (3), if a project's Letter of Award ("LoA") or Power Purchase Agreement ("PPA") is terminated before the Commercial Operation Date ("COD") for reasons not attributable to the applicant (and approved by REIA or a competent authority), the applicant may convert Connectivity from sub-clause (a) to sub-clause (b) or (c) of Regulation 5.8 (xi).

- **Conversion retains the original Connectivity start date and interconnection point.**
- **Post-Conversion Compliance:**
 - i. For sub-clause (b): Financial closure within 6 months of approval or 6 months before Connectivity start, whichever is later.
 - ii. For sub-clause (c): Land documentation within 3 months of CTU approval.
- **Partial conversions lead to revocation of unconverted capacity per Regulation 24.6.**
- **Subsequent conversion back to sub-clause (a) is not permitted.**

8. Financial Closure Enforcement

- **Regulation 11B:**
 - i. Clause (1): Bank Guarantees must be submitted per sub-clause (c) of Regulation 5.8 (vii) or (xi).
 - ii. Clause (2): Failure to achieve or submit proof of financial closure within the stipulated timeline results in: (i) Revocation of Connectivity; (ii) Encashment of Bank Guarantee submitted under Regulation 5.8; and (iii) Treatment of associated guarantees (Conn-BG1, Conn-BG2, Conn-BG3) per Regulations 24.2 or 24.3.

9. Connectivity Category Change and SCOD Adjustment

- i. A new sub-clause (iii) under Regulation 24.6, Clause (1)(a), applies to projects initially granted Connectivity under Regulation 5.8 (xi)(a) but later reclassified to (xi)(b) or (xi)(c) via Regulation 11A.
- ii. The SCOD is set as the Connectivity start date or 6 months from CTU's conversion approval, whichever is later.

Conclusion

The CERC (Connectivity and General Network Access to the inter-State Transmission System) (Second Amendment) Regulations, 2024, introduce provisions to facilitate renewable energy integration, streamline application processes, and clarify requirements for land, financial closure, and Connectivity conversions. Key changes include the introduction of REIA, revised timelines, relaxed criteria for NER and Sikkim, and stricter enforcement mechanisms.

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Warm Regards,

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