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**MINISTRY OF POWER** NOTIFICATION

New Delhi, the November, 2021.

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

1. **Short title and commencement. -** (1) These rules may be called the Electricity (Late Payment Surcharge and related matter) Rules, 2021.

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

1. **Definitions. –** (1) In these rules, unless the context otherwise requires, -

(a) “Act” means the Electricity Act, 2003 (36 of 2003);

(b) Agreement means the following:

(i) Power Purchase Agreement (PPA) between the distribution licensee and the generating company or electricity trader, or

(ii) Power Supply Agreement (PSA) between the distribution licensee and the electricity trader, or

(iii) Transmission Service Agreement (TSA) between the distribution licensee and transmission licensee, or

(iv) such other agreements by whatever name called binding the generating company or transmission licensee and a distribution licensee;

(c) “Base rate of Late Payment Surcharge” means the marginal cost of funds based lending rate for one year of the State Bank of India, as applicable on the 1st April of the financial year in which the period lies, plus five percent and in the absence of marginal cost of funds based lending rate, any other arrangement that substitutes it, which the Central Government may, by notification, in the Official Gazette, specify:

Provided that if the period of default lies in two or more financial years, the base rate of Late Payment Surcharge shall be calculated separately for the periods falling in different years;

(d) "Defaulting entity" means a distribution licensee having outstanding dues of a generating company or electricity trader or transmission licensee or not maintaining the Payment Security Mechanism;

(e) “Default Trigger Date” in case of non-payment of dues, shall be the thirty-first day after the due date of payment to or the seventy sixth day after presentation of bill (it may be replaced by “the next working day after the due date”) by the generating company or the transmission licensee, as the case may be, whichever is later and in case of non-maintenance of the Payment Security Mechanism, shall be thirty-first day after the Payment Security Mechanism, as per the Agreement, ceases to exist;

(f) “Due date” means the date by which the bill for the charges for power supplied by the generating company or electricity trader or for the transmission service provided by a transmission licensee are to be paid, in accordance with the Power Purchase Agreement, Power Supply Agreement or Transmission Service Agreement, as the case may be, and if not specified in the agreement, forty-five days from the date of presentation of the bill by such generating company, electricity trader or transmission licensee;

(g) “Late Payment Surcharge” means the charges payable by a distribution licensee to a generating company or electricity trader for power procured from it, or by a user of a transmission system to a transmission licensee on account of delay in payment of monthly charges beyond the due date;

(h) “Outstanding Dues” means the dues of a generating company, electricity trader, or a transmission licensee, which remains unpaid by the beneficiary beyond the due date.

(i) “Payment Security Mechanism” means Letter of Credit (LC) or/and LC backed by Escrow Agreement as provided in the Agreement:

Provided that, advance payment shall constitute payment security if there are no outstanding dues:

Provided further that the payment security may be for a shorter duration or lower capacity in case of generating company, if there are no outstanding dues;

(j) "Regulating Entity" means the generating company or the electricity trader or the transmission licensee, as the case may be, which notifies the Regional Load Despatch Centre or the State Load Despatch Centre, to regulate the power supply of the defaulting entity;

(k) “Regulated Entity” means the Defaulting Entity whose power supply is regulated in accordance with these Rules.

(2) Words and expressions used and not defined herein but defined in the Act shall have the meaning respectively assigned to them in the Act.

1. **Late Payment Surcharge. -** (1) Late Payment Surcharge shall be payable on the payment outstanding after the due date at the base rate of Late Payment Surcharge applicable for the period for the first month of default.

(2) The rate of Late Payment Surcharge for the successive months of default shall increase by 0.5 percent for every month of delay provided that the Late Payment Surcharge shall not be more than 3 percent higher than the base rate at any time:

Provided that the rate at which Late Payment Surcharge shall be payable shall not be higher than the rate specified in the agreement for purchase or transmission of power, if any:

(3) This rule shall be applicable to all payments to be made in pursuance of-

(a) all Power Purchase Agreements, Power Supply Agreements and Transmission Service Agreements, in which tariff is determined under section 62 of the Act; and

(b) such Power Purchase Agreements, Power Supply Agreements and Transmission Service Agreements that become effective after these rules come into force ie 22nd February 2021, in which tariff is determined under section 63 of the Act:

Provided that it shall not be applicable if the signatories are companies owned by the same person, Government, company or entity.

1. **Adjustment towards Late Payment Surcharge. -** All payments by a distribution licensee to a generating company or a trading licensee for power procured from it or by a user of a transmission system to a transmission licensee shall be first adjusted towards Late Payment Surcharge and thereafter, towards monthly charges, starting from the longest overdue bill.
2. **Operationalizing the** **Payment Security Mechanism and its consequences**

(1) A Distribution licensee shall give unconditional, adequate, and valid Payment Security Mechanism.

Provided in case of difficulty in opening of LC by a Distribution licensee as per the terms and conditions of the PPA, the Distribution licensee can schedule power for a shorter duration from the generating company through advance payment or opening LC of shorter duration and / or opening LC for lower capacity. However, the above facility of advance payment or having LC for a shorter duration and / or opening LC for lower capacity shall not be available when there is any payment outstanding towards the bill(s) of Generation Company beyond the due date.

(2) In case of Non-payment of dues, Generating Companies, electricity traders and transmission licensees shall regulate power supply to the distribution licensee.

(3) The supply of power at any time shall not be without the PSM or advance payment. In case the generating company supplies power without the PSM, they would lose the right to collect the Late payment surcharge from distribution licensee.

(4) If PSM is not available or advance payment has also not been made, the Generating Company or transmission licensee shall immediately give seven days’ notice to the Distribution Licensee for establishment of the same.

(5) If the Distribution licensee fails to establish the PSM after expiry of the seven days notice period, then the generating company shall supply only 75% of the contracted power to Distribution Licensee and balance 25% of contracted power may be sold by the generating company through Power Exchanges.

(6) If the Distribution licensee continues to default for a period of thirty days from the date on which the notice for opening the PSM was given, then the generating company shall be entitled to sell 100% of the contracted power through Power Exchanges.

(7) During the period of default, the Distribution licensee shall continue to be liable for the payment of fixed charges or capacity charges as applicable under the PPA.

(8) The generating company and the distribution licensee would share the gains realized from sale on Power Exchange, if any, as per the PPA. Such gain will be calculated as the difference between selling price of such power in the power exchange and the energy charge.

(9) In case, the PPA does not specify the gain sharing mechanism then the gains accrued on account of sale on the power exchange shall be shared in the ratio of 75:25 between the Distribution Licensee and the generating company.

1. **Regulation of Access to Defaulting Entities**:
2. In case of outstanding dues or in case Payment Security Mechanism is not maintained as per the Agreement for long term or medium term power supply, the generating company or the electricity trader or the transmission licensee, as the case may be, may serve a notice for with-drawal or restriction of access to Inter State Transmission System. Such notice may be served on or after the default trigger date and shall include details regarding the amount of outstanding dues against the Defaulting Entity or the duration of non-maintenance of Letter of Credit or any other Payment Security Mechanism, as the case may be.
3. A copy of the notice under sub-rule (1) shall be forwarded by the Regulating Entity to the Regional Load Despatch Centre and State Load Despatch Centre in whose control area(s) the Regulating Entity is situated with copies thereof to related Regional Load Despatch Centres, State Load Despatch Centres, Regional Power Committees with a request to prepare the implementation plan:

Provided that the notice and request for preparing implementation plan of restriction or with-drawal shall be served and posted on the website of the Regulating Entity at least three (3) days in advance of the proposed date of commencement of regulation of access.

1. Upon receipt of the notice under sub-rule (1) and within 3 days thereafter, the Regional Load Despatch Centre, in whose control area the Defaulting Entity is situated, shall make a plan in writing for implementing the regulation of access and shall inform the Regulating Entity, Regulated Entity and the related State Load Despatch Centres, Regional Power Committees, and Regional Load Despatch Centres of the said Plan and shall post the implementation plan on its website:

Provided that if in the opinion of the Regional Load Despatch Centre concerned, the proposal for regulation of access made by the Regulating Entity cannot be carried out under the prevailing system conditions, then it shall inform the Regulating Entity of its decision in writing and the basis for such decision within three (3) days of receipt of the notice under sub-rule (1), along with the expected date from which regulation can be implemented.

1. The plan for implementation for reduction or with-drawal of access shall be prepared by the Regional Load Despatch Centre in such manner that the quantum of reduction in drawl schedule increases progressively on continued default:

Provided that no new access to ISTS for any period shall be granted while the plan is under implementation:

Provided further that the Regulated Entity shall not be able to access the Power Exchanges for either sale or purchase of power while the plan is under implementation:

Provided further that the Regulated Entity shall not be able to access ISTS against contracts for short-term open access:

Provided further that reduction in access shall be 20% of the contracted medium and long-term open access to ISTS in the first month of the implementation plan:

Provided further that the with-drawl of access to ISTS shall progressively increase by 10 % of the contracted medium and long-term open access to ISTS every succeeding month till access is totally withdrawn on continued default.

Explanation: Short-term open access means access to ISTS for periods up to one year, medium term open access means access to ISTS for one to three years and long-term open access means access to ISTS for periods of more than three years.

1. The regulation of access for the Regulating Entity shall be implemented from the fourth day of the notice as per plan prepared by the Regional Load Despatch Centre unless the Regulating Entity requests cancellation of the regulation of power supply.
2. In case the Regulating Entity decides to withdraw or postpone the regulation of access, it shall communicate its decision in writing to the Regional Load Despatch Centre and/or State Load Despatch Centre concerned, and the Defaulting Entity, along with reasons thereof:

Provided that the communication for withdrawal /postponement of the regulation of access shall be given at least two days prior to the day of withdrawl or postponement of such regulation.

Provided further that Regulating Entity shall communicate the time and date of withdrawal of regulation of access, keeping in view that the regulation of power supply has to be withdrawn immediately after the outstanding dues are recovered.

1. During the period of regulation of access, the Regulated Entity shall restrict its drawl to the revised schedule given by the Load Despatch Centre and the deviations, if any, from the drawl schedule shall be subjected to regulations and charges in this regard.
2. The Regional Load Despatch Centre during the period of regulation of access, shall consider the regulation taking into consideration grid security, and may temporarily suspend implementation of the plan of regulation of access, if in its opinion, grid security is in imminent danger.
3. The Regional Load Despatch Centre concerned shall keep Member-Secretary, Regional Power Committee of the region informed of the implementation of the regulation of access.
4. In case of such reduction of drawl schedule, the liability for payment of   
   capacity charges for its original share in the generating station as also the inter-state transmission charges shall remain with the Regulated Entity.
5. **Supply Obligation of the Generating Company.-** In case a Generating Company fails to offer the contracted power as per the Agreement to a distribution licensee and sells the contracted power without its consent to any other party, the said generating company, on a complaint to this effect by the licensee to the load dispatch centre concerned, shall be debarred from scheduling such quantum of power from that generating station for a period of three months from the establishment of default. The period of debarment shall increase to six months for second default and one year for each successive default.
6. **Power not requisitioned by a Distribution licensee.-** (1)A distribution licensee shall intimate its schedule for requisitioning power for each day from each generating company with which it has an agreement for purchase of power at least one hour before the end of the time for placing proposals/bids in the Day Ahead Market for that day, failing which the generating company may sell the un-requisitioned power in the Day Ahead Market for that day, the gains of which will be shared in the ratio of 75:25 between the licensee and the generating company.

(2) In case a distribution licensee does not requisition power from a must-run power plant, the compensation shall be payable by the licensee to the generating company owning the must-run power plant at the rate specified in the agreement for purchase of power and if no rate is specified in the agreement then in accordance with the Electricity (Promotion of Generation of Electricity from Must-Run Power Plant) Rules, 2021.

1. **Order of Payment and Adjustment towards Late Payment Surcharge.-**  All the bills payable by a distribution licensee to a generating company or a transmission company or a trading company, other than those which have same ownership as that of the distribution license, for power procured from it, shall be time tagged with respect to the date and time of submission of the bill and the payment shall be made by the distribution licensee first against the oldest bill and then to the second oldest bill and so on so as to ensure that payment against a bill is not made unless and until all bills older than it have been paid for.
2. **Repeal.-** (1) The Electricity (Late Payment Surcharge) Rules, 2021 is hereby repealed.

(2) Notwithstanding such repeal, anything done or any action taken under the Electricity (Late Payment Surcharge) Rules, 2021 shall be deemed to have been done or taken under the corresponding provisions of this Rules.

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(Ghanshyam Prasad)

Joint Secretary to the Government of India