Impact of Proposed Amendments to the (Indian) Electricity Act on the Renewable Energy Sector

27 April 2020 | by Ajoy Halder, Halder & Associates

Halder & Associates
Advocates

Tags: Halder & Associates India Financial and corporate

The Ministry of Power (MoP) has issued draft amendments to the (Indian) Electricity Act on April 17, 2020 (Proposed Amendment). We discuss below the possible implications of the Proposed Amendments on the renewable sector.

I. Amendments Aiming to Improve the Financial Health

(a) Removable of Subsidy from Tariff
Proposed Amendment: Perhaps this is the most critical proposed amendment. The Government usually subsidises the cost of electricity to a retail customer. This amendment proposes to remove the subsidy on retail electricity. Instead, subsidy, if any, required to be provided to any section of the retail consumer will be directly provided to such retail consumers by the Government.

Observation: ***Currently, the tariff of retail electricity is not reflective of the actual cost and has thus, contributed to weakening the financial health of the discoms. The amendment will allow tariff, which will reflect the actual cost of supply of electricity. This may raise the cost of retail electricity but will assist the cash trapped discoms in generating more revenue to meet its RPO and other financial obligation, including payment to the generating companies. Also, it may encourage consumers to invest in rooftop solar projects and procure renewable power.***

The Government recovers part of the subsidies by imposing various charges, including a surcharge on open access users. Although the amendment continues to provide for a surcharge on open access users, it also provides that such surcharge will be progressively reduced by the State Electricity Regulatory Commission (**SERC**) in accordance with the Tariff Policy. Therefore, it could be hoped that with the reduction of subsidies, the surcharge imposed on open access users will be gradually reduced. This will, in turn, help reduce the cost of private renewable projects.

(b) Distribution Sub-Licensee and Franchisee
Proposed Amendment: Proposes to introduce the distribution sub-licensee and franchisee. These will be entities recognized and authorised by the distribution licensee to distribute electricity on its behalf in a particular area without requiring any separate licenses. Previously only an entity with distribution licensee was allowed to sell power to retail consumers.

Observation: ***The intention seems to bring in private players in the distribution business and reduce inefficiency, which has crippled the discoms for decades. These could ensure timely recovery of tariff and help secure payment for the private generators.***

(c) Payment Security
Proposed Amendment: Empowers the load dispatch centers (**LDCs**) to oversee the payment security mechanism before scheduling the dispatch of electricity, i.e., no electricity will be despatched unless adequate security of payment as agreed by the parties have been provided.

Observation: The primary obligation of the LDCs is to ensure optimum scheduling and despatch of electricity. However, given the existing unrealized revenue, the amendment plans to empower the LDCs to oversee the payment security mechanism. Although this is a positive step, the payment security is usually provided under the PPAs between the discom/large consumer and the generating companies. In the event of failure of payment, the LDCs may not have any privity of contract to facilitate such payment. Typically the long term PPAs provides for payment security, including those issued under the Guidelines for Procurement of Power by Discoms. Therefore, this Proposed Amendment may in a limited way assist in addressing the issue of non-payment faced by renewable energy sector in India.

II. Other Amendments Benefiting the Renewable Energy Sector

(a) National Renewable Energy Policy (NREP)
Proposed Amendment: Provides for the enactment of NREP by the Central Government in consultation with the State Governments to promote the generation of electricity from renewable sources and hydropower.

NREP to include a minimum purchase obligation (RPO) from renewable and hydropower projects. The proposed penalty for the shortfall in the purchase of renewable energy (i) in the 1st year is INR 0.50 (USD0.0065)/kWh of the shortfall, (ii) in the 2nd year is INR1 (USD0.013)/kWh of the shortfall, and (iii) in the 3rd year is INR 2 (USD0.026)/kWh of the shortfall. This will be enforced through the State electricity commissions.

Observation: Although the amendment is in the right direction in promoting renewable energy, the success of this amendment will depend on the **enactment and implementation** of a reasonable RPO policy by the Government. During the initial days of renewable energy development in India, RPO requirements were proposed by the Government; however, the RPO requirements were not successfully implemented due to the ***lack of enforcement*** and the ***absence of penalties*** for not meeting the RPO obligation.

(b) Cross Border Trade of Electricity
Proposed Amendment: Empowers the Central Electricity Regulatory Commission (**CERC**) to make regulations for cross border trade of electricity. Besides, the Central Government may prescribe rules and guidelines for facilitating cross border trade of electricity.

Observation: India has been trading in electricity with Bangladesh, Bhutan, and Nepal under bilateral MOUs and PPAs. In December 2016, the MoP had issued Guidelines on Cross Border Trade of Electricity pursuant to India's commitment under the SAARC Framework Agreement for Energy Cooperation dated November 2014. Subsequently, CERC issued certain (Cross Border Trade of Electricity) Regulations, 2019, under which tariff for import and export of electricity for cross border trade of electricity was determined through competitive bidding or through mutual agreement of the parties under the overall framework agreements signed between India and the neighbouring countries. However, no relevant amendments were made to the Electricity Act.

The amendment now proposes to give specific power to both Central Government and CERC to make regulations to facilitate cross border trade of electricity. We have to wait and see if the Government and/or CERC makes any revision to the existing guidelines and regulations upon the passing of the amendment. Regardless, this will be a welcomed move for investors, especially renewable power producer as they can sale their renewable power, in addition to India, to the neighbouring countries which suffer from a shortage of power.

(c) Establishment of Electricity Contract Enforcement Authority (ECEA)
Proposed Amendment: Proposes to create ECEA consisting of judicial and technical members appointed by the Central Government. ECEA will have exclusive jurisdiction to adjudicate on contracts relating to sale, purchase, and transmission of electricity. However, ECEA will have no jurisdiction over any matter related to regulation, determination, or dispute involving tariff, which will be adjudicated by the existing regulatory bodies under the Electricity Act, i.e., Appellate Tribunal for Electricity (**APTEL**), CERC, SERCs.

Observation: ECEA will not only reduce the burden of the existing regulatory commissions but also help in speedy resolving disputes, including related to non-payment to generating company. However, there may be instances of overlapping jurisdiction between the existing regulatory commissions and the ECEA, as a dispute may not be purely regulatory or contractual.

About the Author

Ajoy Halder | Halder & Associates | Advocates
ajoy.halder@halderassociates.com; www.halderassociates.com

Ajoy has over 16 years of experience in advising on project development, project finance, and M&A transactions. He has advised on most aspects of energy and infrastructure transactions, including on PPPs/concession agreements, PPAs, PSAs, EPC/construction contracts, project finance, and M&A transactions. The sectors in which he specialises are energy (solar, onshore & offshore wind, hydro, thermal), transport, construction, water, healthcare, real estate, social infrastructure, oil & gas, and technology.

Related articles

- Offshore Wind Power in India: Where do we stand!!!
- Overview of Existing Data Protection Laws in India, and the Proposed Data Privacy Bill
- Downstream Sector and Transport Fuel Market in India
- IMPACT OF COVID-19 ON UNDER CONSTRUCTION RENEWABLE ENERGY PROJECTS IN INDIA
- Halder & Associates: DOWNSTREAM SECTOR AND NATURAL GAS MARKET IN INDIA