Comments and Suggestions on Draft Late Payment Surcharge and Related Matters (Amendment) Rules 2023

Prayas (Energy Group) 12th January 2024

The Ministry of Power has suggested amendments to Rule 7 and Rule 9 of the Late Payment Surcharge (LPS) Rules, 2022 in order to strengthen payment discipline by DISCOMs to generators and to enable better utilisation of un-requisitioned capacity.

The Late Payment Surcharge Rules, 2022 (referred to later as LPS rules) is a crucial sub-legislation which has been instrumental in reducing the pending dues from DISCOMs to CGS and private generators in the past 18 months. Further, Rule 9 of the LPS Rules provides a framework for generators to sell un-requisitioned (URS) capacity. This enables better utilisation of backed down capacity at the national level rather than be restricted by DISCOM level merit order dispatch, adding much needed liquidity to the market, broadening and deepening both DAM and RTM contracts.

The proposed amendments seek to strengthen the penal provisions for payment delays and to enable operationalisation of sale of URS. Prayas (Energy Group)'s comments and suggestions on the draft amendments as well as the present rules are towards seeking clarity in framework and enabling ease of implementation.

Provision of necessary time for DISCOMs to obtain stay in case of disputed amounts

As per the LPS Rules, dues are considered to be outstanding if they are not cleared within 45 days of the presentation of the bill.

Outstanding dues are defined as "dues of a generating company, electricity trading licensee, or a transmission licensee, not stayed by a competent court or Tribunal or dispute resolution agency as designated in the Power Purchase Agreement."

However, it might be practically challenging for DISCOMs obtain a stay within 45 days from the date of presentation of the bill. About 30 days are provided to the procure to issue bill dispute notice. Based on the timelines in PPAs about 30 days are provided from the issue of bill dispute notice (towards amicable settlement) for the matter to be even referred to the dispute resolution agency. It would potentially take time to obtain the stay as well.

Delay in clearance of dues has extreme consequences for DISCOMs as it would result in regulation of network access, affecting power supply. Given the gravity and the impact of the penal measure it is crucial that ample and necessary latitude is provided to DISCOMs

To provide DISCOMs a fair chance to raise disputes, it is suggested that 2 months be provided for DISCOMs to obtain stay from the dispute resolution agency.

Hence, we suggest the following changes to Rule 2 (1) (h) **(in bold):**

"Outstanding dues means the dues of a generating company, electricity trading licensee, or a transmission licensee, not stayed by a competent court or Tribunal or dispute resolution agency as designated in the Power Purchase Agreement **within 60 days of issue of the bill dispute notice,** which remains unpaid by the beneficiary beyond the due date and includes the amount of instalment not paid after the re-determined due date under rule 5

Generators with legitimate dues would be compensated for the delay as they are entitled to carrying cost on these amounts but it would be a huge relief for DISCOMs to exercise their legal right to dispute claims.

As per Rule 7, regulation of network access is in case of non-payment of dues even after 2.5 months from presentation of bill which maybe an impractical timeline in case of disputed amounts. In order to provide DISCOMs sufficient time, the regulation can be phased such that only 50% of short-term network access (STOA, T-GNA) is regulated in the first month. This can increase to 100% of regulation of STOA/T-GNA after another 30 days of default and so on.

Thus, account for disputed amounts, and the time required to obtain a stay, the following edits are suggested to Rule 7:

Regulation of access to defaulting entities – In case of non-payment of **outstanding** dues, by the distribution licensee or other user of transmission system, even after ~~two and half months from presentation of bill~~ **60 days from the due date** by the generating company or transmission licensee or trading licensee, or in case of default in the payment of instalments fixed under rule 5, the power supply to the defaulting entity shall be regulated as follows:

(1) **50% of** Short-term access or Temporary GNA (T-GNA) **entitlement** ~~or General Network Access~~ for sale and purchase of electricity through short-term contracts or T-GNA ~~or GNA~~

Provided that the National Load Despatch Centre may, under exceptional circumstances for grid security, temporarily review the regulation of short-term access or T-GNA under these rules, and recording the reasons for doing so, in writing.

(2) If, even one month after the regulation of access under rule 7 (1) or if the **outstanding** dues have remained unpaid for three and a half months, then apart from the regulation of the short-term access or TGNA ~~or GNA~~ under rule 7 (1) in its

entirety, the long and medium- term access or T-GNA or GNA for sale and purchase of electricity through the contracts other than short-term shall be regulated by Ten per cent.

Clarification on applicability of rules on access to intra-state transmission networks

Currently regulation of network access in the event of persistent default is restricted to inter-state transmission networks.

The draft has stated that the expression short-term access, medium-term open access and long term open access refers to access to the "transmission system" rather than the "inter-state transmission system" as in the prevailing LPS Rules.

Further, the proposed changes to Rule 7 on regulation of network access mentions short-term, medium-term and long-term open access along with GNA and T-GNA.

It is unclear if these changes implies that the regulation of network access under Rule 7 is proposed to apply to intra-state transmission networks as well.

This should be clarified as it would significantly impact the power purchase and sale capability of DISCOMs. We suggest that the regulation of transmission access to the inter-state network would be a sufficiently high deterrent and there is no need to regulate access to the intra-state transmission network. Regulation of intra-state transmission would lead to further technical and legal complexity. For example, there may be certain generators connected to the intra-state network but supplying to entities outside the state. It would be complicated to handle such cases.

Strong provisions to encourage URS sale to be buttressed with provisions to enable efficient trading

The draft has strong proposals to ensure generators offer un-requisitioned as well as shutdown capacities in the DAM and RTM contracts of the Power Exchanges.

Essentially, generators are mandated to offer not only URS (including power available under shut down) in the power exchanges at a price not exceeding 120% of the energy charges, determined or adopted by the ERC. In case of non-compliance, the available capacity not offered shall not be considered for computation of fixed charges.

This provides a strong disincentive for generators to not sell URS power and it should ideally lead to improved reporting of availability over time.

The intention of the proposed cap at 120% of the approved energy charges is perhaps to ensure that bid offers are cleared. However, there is wide variation between approved and actual charges:

- For capacity under Section 63, where there is change in law dispensation on energy charges,

which is awarded post-facto at a later date, the dispensation would not account for changes / increase in the charges on the day the capacity is offered.

- For capacity under Section 62, the energy charges finally passthrough is based on post-facto true-ups. There is a wide variation in the approved (or estimated) charges and actual energy charges.

It is quite likely then that the deviation between actual and approved energy charges is much more than 20%. In such a case, if the bid clears, the gain and loss sharing between the generator and the DISCOM could be skewed as DISCOMs would bear the deviation between approved and actual variation in energy charges on a post facto basis while the gains will be split based on the market clearing price. This is illustrated with an example in Table 1.

Table 1: Illustration of gain and loss sharing with approved energy charges

Particulars	Calculation	Rs/unit
Approved energy charge	A	3.5
Actual energy charges	B	4.3
Market clearing price	C	4.3
Generator bid	D	4.2
Gains from sale of URS	E= C-A	0.8
Generators share of gain	F = 0.5 * E	0.4
DISCOMs share of gain (net of additional cost after post-facto approval)	G= (0.5*E)+(A-B)	-0.4

Such a trade is not equitable for the DISCOM. In this case, while the deviation between approved and actual depends on the risks faced by the generators it is the DISCOM which wholly bears the risk of deviation between approved and actual charges.

Therefore, it is suggested that the

- Price cap on bids offered can be sufficiently high (say, 175% - 200% of the energy charges)
- DISCOMs only pay actual energy charges for the capacity requisitioned by the DISCOM.
- For URS capacity offered on the market, estimation of gain and loss sharing is based on approved energy charges rather than actuals
- DISCOM shall not be liable to pay any variable / energy charges for the generation cleared on the market, irrespective of any change in law claims
- This would incentivize generators to improve trading strategies and increase efficiency in order to see gains with sale of URS.
- It would also ensure that market prices are reflective of actual cost of generation rather than it being cross-subsidised by DISCOM consumers.

The proposed approach is illustrated in Table 2:

Table 2: Example of savings based on suggested approach by PEG

Particulars	Calculation	Rs/unit
Approved energy charge	A	3.5
Actual energy charges	B	4.5
Market clearing price	C	6.5
Generator bid	D	6.5
Gains from sale of URS	E= C-A	2
Generators share of gain	F = 0.5 * E	1
DISCOMs share of gain	G= 0.5 * E	1

It is suggested that the 2nd proviso in Rule 7 (1) have the following changes:
Provided also that such offer of power in the market shall be at a price not exceeding **~~120~~** 200% of its energy charge, as determined or adopted by the Appropriate Commission and that gain and loss sharing is calculated on the basis of the energy charge **as determined or adopted by the Appropriate Commission before post-facto true-up or change in law dispensation:**

Mechanism of gain and loss sharing to reflect payment discipline of DISCOMs

9 (2) of the LPS Rules, stipulates that gain from sale of power shall be adjusted to first cover recovery of fixed charges of the generator and liquidation of overdue amount before sharing the gains with the DISCOMs.

There are strong provisions (including regulation of network access) in the Rules to ensure timely payment of all charges including fixed charges and payment of overdue amounts. Also, irrespective of URS sales, procurers are responsible for payment of fixed charges.

Generators can exercise their right to payment of dues via provisions in the PPA and in the LPS Rules and the gain from sale of URS power need not have these considerations.

Therefore, the following edits are suggested to Rule 7 (2):
Gain and loss sharing: The gain from the sale of such power shall be adjusted in the following order :-
(i)payment to generating company of up to three paise per unit;
~~(ii)recovery of fixed charges;~~
~~(iii)liquidation of overdue amount;~~
(iv)the balance shall be shared in the ratio of 50:50 between the distribution licensee and the generating company.

Other enabling changes required for URS sale

The provisions in the Rules are enablers for URS sale but in order to ensure that it translates to increased URS capacity in the market it is crucial that there are changes to FSAs to allow for changes in offtake across seasons and years based on demand. Further, DISCOMs should also provide coarser schedules (say hourly) on a 15 day ahead basis which would enable Generators plan fuel supply better and to participate in URS trades. Some of these ideas are discussed in our report "Flexibilisation of the coal-based generation value chain: A pre-requisite to reduce the friction in energy transition[1]" by Prayas (Energy Group) which is enclosed with this submission. In addition, it is critical that enabling provisions towards sale of URS, DISCOM day-ahead scheduling are incorporated in state grid codes.

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[1] https://energy.prayaspune.org/images/pdf/FlexibilisationReport_Nov2023.pdf