

No. 23/18/2020 -R&R
Government of India
Ministry of Power

Shram Shakti Bhawan, Rafi Marg,
New Delhi, 1st October, 2020

To

1. Chairperson, Central Electricity Authority, New Delhi.
2. Principal Secretary/Secretary (Energy), All State Governments/UTs.
3. Registrar, Appellate Tribunal for Electricity, New Delhi.
4. Secretary, Central Electricity Regulatory Commission, New Delhi.
5. Secretaries, All SERCs/JERCS.
6. Chairman/CMDs for all PSUs under administrative control of Ministry of Power.
7. CMDs/MDs of DISCOMs/GENCOs/TRANSCO of all State Governments.
8. DG, Association of Power Producers, New Delhi.
9. President, FICCI, Federation House, Tansen Marg, New Delhi.
10. Head, Prayas (Energy Group), Pune.
11. President, PHDCCI, New Delhi
12. ASSOCHAM, Chanakya Puri, New Delhi

Subject: Draft Electricity (Change in Law, Must-run status, and other Matters) Rules, 2020.

A draft of Electricity (Change in Law, Must-run status, and other Matters) Rules, 2020 have been prepared by this Ministry. These Rules are proposed to be issued in exercise of powers conferred by Section 176 of the Electricity Act, 2003 (Act 36 of 2003) for Pass through in cases of Change in Law and compensation to RE generators for loss of generation due to non-scheduling by the procurers/intermediary procurers.

2. The aforesaid Draft Rules are enclosed herewith with a request to provide your comments, if any, to this Ministry within 21 days from the date of this letter **i.e. by 22.10.2020**. The comments may also be emailed at sandeep.naik68@gov.in and debranjan.chattopadhyay@nic.in.
3. This issues with the approval of the competent authority.

Yours faithfully,

Encl: As above



(D. Chattopadhyay)
Under Secretary to the Government of India
Tele No. 23730265

Copy to:

- i. All Joint Secretaries/Economic Adviser, Ministry of Power.
- ii. PS to Hon'ble Minister, Sr. PPS to Secretary (Power), PS to AS(R&R), Sr. PPS to JS (R&R), PS to Director (R&R)
- iii. Incharge, NIC, Ministry of Power with the request to upload this document on the website of Ministry of Power under heading 'Current Notices' for the information and comments of the public.

**The Draft Electricity (Change in Law, Must-run status, and other Matters)
Rules, 2020.**

GOVERNMENT OF INDIA
MINISTRY OF POWER

New Delhi, the October, 2020

NOTIFICATION

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

1. Short title and commencement.-

- (a) These rules shall be called the Electricity (Change in Law, Must-run status, and other Matters) Rules, 2020.
- (b) These rules shall come into force on the date of their publication in the Official Gazette.

2. Definitions.-(1) In these rules, unless the context otherwise, requires: -

- (a) "Act" means the Electricity Act, 2003 (36 of 2003);
- (b) "Change in Law" means the occurrence of any of the following events after the date of submission of bids in case of tariff based bidding under Section 63 of the Act or after the determination of tariff by the Appropriate Commission under Section 62 of the Act.
 - (i) the enactment, bringing into effect, adoption, promulgation, amendment, modification or repeal, of any law or
 - (ii) a change in interpretation of any law by a competent court of law, tribunal or Indian Governmental Instrumentality provided such court of law, tribunal or Indian Governmental Instrumentality is the final authority under law for such interpretation or
 - (iii) change in any consents, approvals or licenses available or obtained for the project to be set up, unless specifically excluded in the agreement for supply or transmission of electricity, which results in any change in any cost of or revenue from the business of selling or transmitting electricity;but shall not include (i) any change in any withholding tax on income or dividends distributed to the shareholders of the seller or transmitter of electricity, or (ii) change in

respect of deviation settlement charges or frequency intervals by an Appropriate Commission.

(c) "Must-run power plant" shall mean a power plant, as given in sub-section (1) of section 4.

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

3. Adjustment in Tariff on Change in Law-

(a) On the occurrence of a Change in Law event the monthly tariff shall be adjusted in accordance with the principle that the affected party is compensated so as to restore it to the same economic position as if such change in law had not occurred.

(b) The pass through will happen in an expeditious manner within a maximum of 30 days of the Change in Law event.

(c) The bidding document or the Power Purchase Agreement will lay down the formula according to which the pass through shall be calculated and recovered. Where the relevant formula for pass through has not been included either in the bidding document or the PPA/PSA the Appropriate Government may prescribe a formula by notification or direct that the formula given in the Annexure to these Rules shall be followed.

(d) The pass through shall be on a per unit of electricity basis and shall be recovered along with Tariff and shall be a part of Tariff.

(e) The pass through according to the formula stipulated above shall be calculated and shall come into effect automatically after 30 days of the Change in Law event.

(f) Within 30 days of the pass through coming into effect the Generator/ Intermediary procurer/ Procurer shall submit the relevant documents/calculation sheets to the Appropriate Commission for truing up the rate of pass through per unit.

(g) The Appropriate Commission shall verify the calculation and do the truing up within 60 days of the pass through coming into effect after which the rates of pass through shall be adjusted if necessary according to the truing up.

4. Must-run -

(1) A wind, solar, wind-solar hybrid or hydro power plant (in case of excess water leading to spillage) or a power plant from any other sources of renewable energy, as

may be notified by the Government, having an agreement to sell power to any person (hereinafter called Power Purchase Agreement (PPA)) shall be treated as a must-run power plant, which shall not be subjected to curtailment or regulation of power on account of merit order dispatch or any other commercial consideration:

Provided that power generated from a must-run power plant may be curtailed or regulated in the event of any technical constraint in the electricity grid or for reasons of security of the electricity grid;

Provided further that on curtailment or regulation of power, the provisions of Indian Electricity Grid Code (IEGC) shall be followed.

- (2) In the event of a curtailment of supply from a Power Plant which comes under the category of “Must Run”, compensation shall be payable by the Procurer to the Generator at the rates prescribed in the PPA.

Provided that when the notice for curtailment is received by the generating company of such a power plant at least 24 hours in advance from the scheduled supply, it shall mandatorily sell the power not scheduled in the Power Exchange.

- (3) The amount realized by a power plant from such sale of power in a Power Exchange, after deducting expenses, if any, in such sale, shall be adjusted against the compensation payable as per PPA, on monthly basis. Excess realization during a month from sale of power in a Power Exchange, if any, shall be carried forward and adjusted in the next month(s).
- (4) Where the rate of compensation is not laid down in the PPA/PSA it shall be at rate of 75 % of the PPA rate per unit.

5. Trading licensee to procure power for distribution licensees

- (1) Intermediary procurer may be allowed to procure power through a transparent process of bidding in accordance with the guidelines issued by the Government under section 63 of the Electricity Act 2003 for sale to one or more distribution licensees.
- (2) In case of a bid on the bucket filling basis –where multiple suppliers are selected at different rates in order to meet the full requirements the weighted average of all the

bids received shall be the resultant bid rate for the bid and power may be offered by the Intermediary procurer for sale at the said rate.

- (3) For agreements signed between the trading licensee and distribution licensees prior to the coming into effect of these rules for sale of power based on sources of renewable energy from suppliers selected in a bidding process conducted under the guidelines issued by the Government under section 63 of the Act,
 - (i) The tariff applicable shall be the weighted average tariff of all the suppliers selected in the same bidding process;
 - (ii) The appropriate Commission shall adopt the weighted average tariff after hearing the parties concerned;
 - (iii) The tariff shall be trued up by the Appropriate Commission on yearly basis.
- (4) The trading licensee shall be allowed to retain only the trading margin as specified in the agreements or the regulations or as determined by the Appropriate Commission.

Formula for determination of impact of an event of change in law

Formula to calculate adjustment in the monthly tariff due to the impact of Change in Law, which is non-recurring in nature

Let Financial Impact of Change in Law = P;

then the modification in PPA tariff (M.T.) for compensating the financial impact is given by

$$M.T. = \frac{Y}{X}$$

where X = estimated monthly electricity generation (in kWh) = (1/12) × [contracted capacity of the RE power plant as per PPA (in MW) × Annual CUF declared in PPA (in %) × 8760 hours × 10];

$$\text{and } Y = \frac{(P \times M_r)(1 + M_r)^n}{(1 + M_r)^n - 1}$$

where,

n = no. of months over which the financial impact has to be paid; and

M_r = monthly rate of interest = $\frac{R}{12 \times 100}$; where R = annual rate of interest on loan component (in %) as considered by Central Electricity Regulatory Commission (CERC) in its Order for Tariff determination from Renewable Energy Sources for the year in which the project is commissioned. In absence of relevant CERC Orders for the concerned year, the interest rate shall be average interest rate plus 200 basis points above the average State Bank of India Marginal Cost of Funds based leading rate (MCLR of one year tenor) prevalent during the last available six months for such period.

Further, the M.T. shall be trued up annually based on actual generation of the year so as to ensure that the payment to the Generator is capped at the yearly annuity amount.
