



Suggestions on Draft of Electricity (Change in Law, Must-run Status, and other Matters) Rules, 2020

Submitted to Ministry of Power

October 2020



The Ministry of Power published the “Draft of Electricity (Change in Law, Must-run status, and other Matters) Rules, 2020” on October 1, 2020, henceforth called ‘Draft Rules,’ on its website and has invited comments. This submission is in response to the said notification, and we request the Ministry to accept this submission on record.

GENERAL COMMENTS

The Ministry of New and Renewable Energy vide no: **F.No.238/78/2017-Wind** issued ‘Guidelines for Tariff Based Competitive Bidding Process for Procurement of power from Grid Connected Wind Solar Hybrid Projects’ on October 14, 2020. These guidelines address issues related to Change in law, compensation in cases of curtailment and others, while the Draft Rules published by the Ministry of Power and currently in the public domain for review and suggestions by stakeholders. This may lead to confusion and conflict between rules to be notified by the Ministry of Power and guidelines notified by MNRE. It is submitted that appropriate measures are taken to address the issue of duplication and conflict for Rules to be notified by MoP.

Detailed comments for the draft rules are discussed in the following sections.

2. Definitions

(b) Change in law

(iii) change in any consents, approvals licences 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;

OUR COMMENTS

The definition of the change in law is ambiguous and subject to broader interpretation than the inherent objective of the Draft Rules. The clause “change in consents and approvals, licenses available or obtained for the project to be set up may have a very broad interpretation which may not be intuitively aligned with the objective of the proposed Rules. For instance, the following cases shall not constitute a ‘change in law’ event and shall be explicitly excluded from the definition.

- i. Change in status of consents, approvals and licenses because of malpractices or unsatisfactory performance or both by the affected party.
- ii. Change in cost or status of license obtained by the affected party for use of technology, brand or other intellectual property rights.

Hence, we suggest that appropriate safeguards are provided to prevent misinterpretation of the proposed definition or to remove part 2(b)(iii) in totality from the definition of the ‘change in law’.

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.

OUR COMMENTS

We recommend that the clause is appropriately revised to ensure the transfer of benefit to downstream entities (and electricity consumers) in cases where of 'change in law' results in benefit to any entity in the value chain i.e., Generation and Transmission companies. The benefits thus received shall be restored (transferred) as a pass-through in an expeditious manner within a maximum of 30 days of the 'Change in Law' event. This shall be made part of the tariff for truing up the rate of pass-through per unit, thus compensating the consumer.

3. Adjustment in tariff on change in law

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

(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.

OUR COMMENTS

In cases where a 'change in law' requires additional capital expenditure, prudence checks on costs and expenditures are necessary. This is also the responsibility of the commission, and hence should not be limited by notification of the Draft Rules as it is. Clause 3(g) may be replaced by the following clause:

(g) The Appropriate Commission shall verify the calculation, **including other prudence checks as necessary**, 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.

3. Adjustment in tariff on change in law

(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.

OUR COMMENTS

Central Electricity Regulatory Commission or the appropriate State Electricity Regulatory Commission are the appropriate authority to notify guidelines through proper stakeholder consultations in cases where the relevant formula for pass-through has not been included either in the bidding document or the PPA/PSA. Hence, the same shall replace 'the Appropriate Government in the Clause 3(c).

Moreover, the formula provided in Annexure-I of the Draft Rules does not address the issue of the impacts by the change in law which are recurring in nature. Guidelines to account for recurring impact and their escalation over time shall also be provided.

(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.

OUR COMMENTS

The following additional clause may be included to account for the difference in the timeline of "Change in Law" event and the actual impact of the "Change in Law."

The pass-through shall be applicable from the time its impact is realised.

They also fail to specify the clauses for retrospective applicability of the rules. Thus, if notified in the current form will lead to litigations where past cases of change in laws including those notified prior to notification of the proposed rule shall be applicable.

4. Must-run

(1) A wind, solar, wind-solar hybrid or hydropower 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:

OUR COMMENTS

Must-run status shall be applicable to renewable energy technologies or sources which provide infirm power. Hence, technologies such as 'waste to energy' and biomass should be explicitly excluded.

5. Trading licensee to procure power for distribution licensees

(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.

OUR COMMENTS

We recommend including the provisions addressing the trading margins payable to the Trading License/Intermediary procurer in the event of a curtailment of supply from a Power Plant.