The
Electricity (Timely Recovery of Costs due to Change in Law) Rules, 2021[1]

In exercise of the power conferred by sub-section (1), read with clause (z) of sub-section (2), of Section 176 of the Electricity Act, 2003 (36 of 2003), the Central Government hereby makes the following rules, namely:—

1. Short title, commencement and application.—(1) These rules may be called the Electricity (Timely Recovery of Costs due to Change in Law) Rules, 2021.

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

(3) These rules shall apply to a generating company and transmission licensee.

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

(*a*) "Act" means the Electricity Act, 2003 (36 of 2003);

(*b*) "agreement" means an agreement for the purchase, supply or transmission of electricity entered into under the Act;

(*c*) "change in law", in relation to tariff, unless otherwise defined in the agreement, means any enactment or amendment or repeal of any law, made after the determination of tariff under Section 62 or Section 63 of the Act, leading to corresponding changes in the cost requiring change in tariff, and includes—

(*i*) a change in interpretation of any law by a competent court; or

(*ii*) a change in any domestic tax, including duty, levy, cess, charge or surcharge by the Central Government, State Government or Union territory administration leading to corresponding changes in the cost; or

(*iii*) a change in any condition of an approval or license obtained or to be obtained for purchase, supply or transmission of electricity, unless specifically excluded in the agreement for the purchase, supply or transmission of electricity, which results in any change in the cost, but does not include—

(A) any change in any withholding tax on income or dividends distributed to the shareholders of the generating company or transmission licensee; or

(B) change in respect of deviation settlement charges or frequency intervals by an Appropriate Commission;

(*d*) "law" includes any Act, Ordinance, order, bye-law, rule, regulation, notification, for the time being in force, in the territory of India.

1. Vide Notification G.S.R. 751(E), dated 22-10-2021, published in the Gazette of India, dated 22-10-2021.

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

3. Adjustment in tariff on change in law.—(1) On the occurrence of a change in law, the monthly tariff or charges shall be adjusted and be recovered in accordance with these rules to compensate the affected party so as to restore such affected party to the same economic position as if such change in law had not occurred.

(2) For the purposes of sub-rule (1), the generating company or transmission licensee, being the affected party, which intends to adjust and recover the costs due to change in law, shall give a three weeks prior notice to the other party about the proposed impact in the tariff or charges, positive or negative, to be recovered from such other party.

(3) The affected party shall furnish to the other party, the computation of impact in tariff or charges to be adjusted and recovered, within thirty days of the occurrence of the change in law or on the expiry of three weeks from the date of the notice referred to in sub-rule (2), whichever is later, and the recovery of the proposed impact in tariff or charges shall start from the next billing cycle of the tariff.

(4) The impact of change in law to be adjusted and recovered may be computed as one time or monthly charges or per unit basis or a combination thereof and shall be recovered in the monthly bill as the part of tariff.

(5) The amount of the impact of change in law to be adjusted and recovered, shall be calculated—

(*a*) where the agreement lays down any formula, in accordance with such formula; or

(*b*) where the agreement does not lay down any formula, in accordance with the formula given in the Schedule to these rules;

(6) The recovery of the impacted amount, in case of the fixed amount shall be,—

(*a*) in case of generation project, within a period of one-hundred eighty months; or

(*b*) in case of recurring impact, untill the impact persists.

(7) The generating company or transmission licensee shall, within thirty days of the coming into effect of the recovery of impact of change in law, furnish all relevant documents along with the details of calculation to the Appropriate Commission for adjustment of the amount of the impact in the monthly tariff or charges.

(8) The Appropriate Commission shall verify the calculation and adjust the amount of the impact in the monthly tariff or charges within sixty days from the date of receipt of the relevant documents under sub-rule (7).

(9) After the adjustment of the amount of the impact in the monthly tariff or charges under sub-rule (8), the generating company or transmission licensee, as

the case may be, shall adjust the monthly tariff or charges annually based on actual amount recovered, to ensure that the payment to the affected party is not more than the yearly annuity amount.

THE SCHEDULE

[*See* Rule 5(*b*)]

FORMULA FOR DETERMINATION OF IMPACT IN TARIFF OR CHARGES DUE TO 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—

For Generation Project:—

Let financial impact of change in law = P;

then the modification in the monthly tariff (MT) for compensating the financial impact is given by—

$$MT = \frac{Y}{X}$$

where **X** = estimated monthly electricity generation (in kWh) = (1/12) × [contracted capacity of the power plant as per the Agreement (in MW) × Normative Plant Load Factor (PLF) or Availability factor* or Capacity Utilisation Factor (CUF) (in case of RE), as per the Agreement (in %) × 8760 hours × 10];

(*in case PLF and CUF is not provided, the availability factor mentioned in the agreement may be considered. However, it will be trued up with reference to the actual generation on annual basis.)

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

where—

n = No. of months over which the financial impact has to be paid (subject to a maximum of 180 months in case of the non-recurring fixed amount but in case of recurring impact it will be till the impact persists); and

$$M_r = \text{monthly rate of interest} = \frac{R}{12 \times 100}$$

where **R** = annual rate of interest on loan component (in %) as considered by the Central Electricity Regulatory Commission in its Order for Tariff determination from Conventional or Renewable Energy Sources (whichever is applicable) for the year in which the project is commissioned. In absence of relevant Orders of the Central Electricity Regulatory Commission 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, of one year tenor, prevalent during the last available six months for such period.

Further, generating company or intermediary procurer or the trading licensee shall true up the MT annually based on actual generation of the year so as to ensure that the payment to the affected party is capped at the yearly annuity amount.