

No. 23/23/2021-R&R
Government of India
Ministry of Power

Shram Shakti Bhawan, Rafi Marg,
New Delhi, 9th November, 2021

To,

1. Principal Secretaries/Secretaries (Power/Energy) of all State Governments/UTs
2. Secretaries of All State Electricity Regulatory Commissions/JERCs.
3. Chairman/CMDs of all PSUs under administrative control of Ministry of Power
4. CMDs/MDs of Discoms/Gencos of all State Governments
5. CMDs of CPSUS
6. CMDs of CGSs

Subject: Automatic pass through of the fuel and power procurement cost in tariff for ensuring the viability of the power sector -regarding

Sir,

1. Power sector has been witnessing issues relating to availability of fuel, mainly coal and gas for the power plants. Recently there was a sudden spike in the price of coal and gas in the international markets.
2. The Central Government after detailed consultation with all the stake holders of power sector has notified Electricity (Timely Recovery of Costs due to Change in Law) Rules, 2021 on 22.10.2021 providing for an automatic pass through of impact in cost due to change in law automatically by a formula.
3. Learning from the recent experience and in order to ensure that the power sector does not face any constraints in maintaining assured power supply to meet the demand, all the stakeholders in the value chain of power sector must ensure that there is timely recovery of cost. This involves two steps:
 - a. The cost pass through by the the generating companies to the distribution companies.
 - b. The cost pass through from distribution companies to the consumer.
4. For the lack of a robust mechanism of timely automatic pass through of fuel cost and transportation cost, the generating companies face constraints in maintaining stock of fuel during such periods. This results in shortage of supply in the grid which may affect the power supply to the consumer.
5. Distribution companies face revenue constraints as the corresponding pass through of cost is not done regularly and timely in the retail tariff. Timely collection of revenue from consumer would ensure timely payment by the distribution company to the generating stations and coal companies. This will also help in ensuring availability of supply to meet the expected increase in demand.

6. Section 62(4) of the Electricity Act provides that tariff or part of any tariff can be amended more frequently than once in any financial year in respect of any changes expressly permitted under the terms of any fuel surcharge formulae as may be specified.

7. Some of the states already have formula for fuel surcharge adjustment which is being used for this purpose. A state wise list of the status of fuel surcharge formula prescribed by the State Commission is enclosed. This is as per the information submitted by the SERCs to Forum of Regulators in compliance of the APTEL order. However, this is not an automatic pass through and there remains need for approval of the State Commission. The present mechanism leads to delays. It may be changed to provide for automatic pass through in tariff change in costs on account of change in law/ power purchase costs in accordance with a formula laid down by the State Regulatory Commissions. The Discoms will pass through the change in costs according to the said formula whenever the change in costs due to change in law/power purchase costs occur. Till a suitable formula is prescribed by the State Commissions the formula given in the Electricity (Timely Recovery of Costs due to Change in Law) Rules, 2021 may be adopted. After giving effect to the pass through the Discoms will send the relevant papers/ calculation sheets to the commissions which shall verify and confirm the Pass through within 60 days. This will result in less working capital requirements by the Discoms, leading to less costs of power for the consumers.

8. The State Governments have the powers to give subsidy in consumer tariff, by advance payment of subsidy to distribution companies under Section 65 of the Electricity Act.

9. The State Commissions are requested to place the above mechanism in operation with immediate effect.

10. This issues with the approval of the Competent Authority.

Yours faithfully

Encl: As above



(Ghanshyam Prasad)
Joint Secretary to the Govt. of India
Ph: 011-23710389

Copy to: PS to Hon'ble MoP, APS to Hon'ble MOSP, Sr. PPS to Secy.(P), Sr. PPS to JS(R&R)
MoP

MINISTRY OF POWER

NOTIFICATION

New Delhi, the 22nd October, 2021

G.S.R. 751(E).—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.

(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, until 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) = $(1/12) \times$ [contracted capacity of the power plant as per the Agreement (in MW) \times Normative Plant Load Factor (PLF) or Availability factor* or Capacity Utilisation Factor (CUF) (in case of RE), as per the Agreement (in %) \times 8760 hours \times 10];

(* in case PLF and CUF is not provided, the availability factor mentioned in the agreement may be considered. However, it will be true 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.

[F. No. 23/18/2020-R&R]

GHANSHYAM PRASAD, Jt. Secy.

State-wise Fuel & Power Purchase Cost Adjustment for FY 2020-21

States	Whether Fuel Surcharge Adjustment formula/mechanism provided in regulation (Yes/No)?	Frequency of adjustment of Fuel Surcharge as per the regulations (monthly / bi-monthly / quarterly)?	Fuel Surcharge Adjustment being done as per the regulations? If not, please provide the reasons thereof
Andhra Pradesh	Yes	Yearly. But the same has been amended to quarterly mechanism w.e.f from 01.04.2021.	Yes
Arunachal Pradesh	No	-	-
Chhatisgarh	Yes	Bi -monthly	Yes
Delhi	Yes	Quarterly	Yes
Gujarat	The Fuel Surcharge Adjustment formula / mechanism is not provided in regulation. However, the FPPPA mechanism is already in place in Gujarat.	Quarterly	Yes
Haryana	Yes	Quarterly	Yes
Goa	Yes	Quarterly	Yes
Andaman & Nicobar Islands	Yes	Quarterly	No, Not applicable due to Diesel Generation
Puducherry	Yes	Quarterly	done
Chandigarh	Yes	Quarterly	done
Lakshadweep	Yes	Quarterly	No, Not applicable due to Diesel Generation.
Dadra & Nagar Haveli	Yes	Quarterly	done
Daman & Diu	Yes	Quarterly	done
J&K & Ladakh	Yes. Truing up of past year take care of such variations as uncontrollable factors	Not applicable	Not applicable
Manipur	No. It is provided in Tariff Order	To be made monthly.	Yes
Mizoram	No. It is provided in Tariff Order	To be made monthly.	Yes
Jharkhand	Yes	Quarterly	No, Quarterly Submission was not made
	Yes	Quarterly	No, Quarterly Submission was not made
	Yes	Quarterly	No, Quarterly Submission was not made
	Yes	Quarterly	No, Quarterly Submission

	Yes	Quarterly	was not made
Karnataka	Yes. The commission has notified the regulations for collection of FAC on 22.03.2013. The FAC is effective from 01.07.2013	Quarterly	Fuel surcharge Adjustment being done as per the Regulations
Kerala	Yes	Quarterly	Matter is sub judice. The issue of fuel surcharge in the case of certain unapproved PPAs have been litigated in the Hon'ble APTEL and the APTEL directions has been stayed by the Hon'ble Supreme Court. Matter is pending in the APEX court at present
Maharashtra	Yes, Fuel surcharge Adjustment Formula is provided in MYT Tariff Regulations ,2019	Monthly	Yes , Fuel surcharge Adjustment Formula being done as per MYT Tariff Regulations ,2019 Further, FAC stabilization fund have been created to have minimal impact of monthly FAC variations on end consumers
	Yes , Fuel surcharge Adjustment Formula is provided in MYT Tariff Regulations ,2019	Monthly	Yes , Fuel surcharge Adjustment Formula being done as per MYT Tariff Regulations ,2019 Further, FAC stabilization fund have been created to have minimal impact of monthly FAC variations on end consumers
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	Yes , Fuel surcharge Adjustment Formula is provided in MYT Tariff Regulations ,2019	Monthly	Yes , Fuel surcharge Adjustment Formula being done as per MYT Tariff Regulations ,2019 Further, FAC stabilization fund have been created to have minimal impact of

			monthly FAC variations on end consumers
Meghalaya	Yes	Approved by the Commission from time to time	Yes
Nagaland	No such regulations have been framed for the State of Nagaland since there is no Coal based Thermal Plant in the State	NA	NA
Odisha	Yes	Once	yes
Punjab	Yes	Quarterly	yes
Rajasthan	Yes	Quarterly	yes
Tamilnadu Electricity Regulatory Commission	Yes. Provided in MYT tariff Regulations	Quarterly (As stated in T.O.20.6.2013)	Petition not filed by the Licensee, TANGEDCO
Tripura Electricity Regulatory Commission	YES Mechanism specified in TERC (Fuel and Power Purchase Price Adjustment Formula) Regulations, 2011	Quarterly	yes
Uttar Pradesh	Yes as per Regulations the Licensee has to file for fuel surcharge adjustments (However , in the MYT regulations 2019 the same is referred to as " incremental Cost")	Quarterly	Yes, as per the Regulations
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Uttarakhand	Yes	Quarterly	Yes, Fuel Surcharge Adjustment is being done as per the Regulations notified by the commission Order for Adjustment of fuel surcharge is being issued regularly by the commission based on the submission of the licensee in the matter