

**No. 23/22/2019-R&R(Part-4A)**  
**Government of India**  
**Ministry of Power**

Shram Shakti Bhawan, Rafi Marg,  
New Delhi, 20<sup>th</sup> December, 2021

To,

1. Secretary, MNRE, New Delhi
2. The Chairperson, Central Electricity Authority, Sewa Bhavan, R.K. Puram, New Delhi
3. The Secretary, Central Electricity Regulatory Commission (CERC), New Delhi
4. Principal Secretaries/Secretaries (Power/Energy) of all State Governments/UTs
5. Secretaries of All State Electricity Regulatory Commissions/JERCs.
6. Chairman/CMDs of all PSUs under administrative control of Ministry of Power
7. CMD, SECI, New Delhi
8. CMDs/MDs of Discoms/Gencos of all State Governments
9. CMD, IEX LTD New Delhi & MD/CEO, PXIL, Mumbai
10. DG, Association of Power Producers, New Delhi.
11. President, FICCI, House No. 1, Tansen Marg New Delhi
12. President, CII, New Delhi
13. President, PHDCCI, New Delhi
14. ASSOCHAM, Chanakyapuri, New Delhi
15. Member, PRAYAS Energy Group, Pune
16. DG, Electric Power Transmission Association (EPTA), New Delhi
17. Chairman Indian Wind Power Association, New Delhi
18. Chairman, Indian Wind Turbine Manufacturers Association, New Delhi
19. Director General, National Solar Energy Federation of India (NSEFI), New Delhi.

**Subject: Draft Electricity (Late Payment Surcharge and related matters) Rules, 2021.**

Sir/Madam,

I am directed to forward herewith the draft Electricity (Late Payment Surcharge and related matters) Rules, 2021, with the request to provide your comments, if any, to this Ministry within 21 days from the date of this letter i.e. by 10th January, 2022. The comments may also be emailed at [debranjan.chattopadhyay@nic.in](mailto:debranjan.chattopadhyay@nic.in).

2. This issues with the approval of Competent Authority.

**Encl:** as above

Yours faithfully



(Dr. P.K. Sinha)

Under Secretary to the Govt. of India

Ph: 011-2373 0265

**Copy for information to:** PS to Hon'ble Minister for Power and NRE, APS to HMoSP, Sr. PPS to Secretary (P), Sr. PPS to JS (R&R), Ministry of Power.

**Copy to:** Technical Director, NIC Cell for uploading on MOP's website under "Current Notices" with the heading of "**Seeking comments on draft Electricity (Late Payment Surcharge and Related Matters) Rules, 2021**".

[TO BE PUBLISHED IN THE GAZETTE OF INDIA, EXTRAORDINARY, PART-II,  
SECTION 3, SUB-SECTION (i)]

MINISTRY OF POWER  
NOTIFICATION

New Delhi, the December, 2021

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

1. **Short title and commencement.** - (1) These rules may be called the Electricity (Late Payment Surcharge and related matters) Rules, 2021.

(2) They 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) **Agreement** means the following:

(i) Power Purchase Agreement (PPA) between the distribution licensee and the generating company or electricity trading licensee, or

(ii) Power Supply Agreement (PSA) between the distribution licensee and the electricity trading licensee, or

(iii) Transmission Service Agreement (TSA) between the distribution licensee and transmission licensee, or

(iv) such other agreements by whatever name called and binding on the generating company or electricity trading licensee or transmission licensee and a distribution licensee;

(c) “**Base rate of Late Payment Surcharge**” means the marginal cost of funds based lending rate for one year of the State Bank of India, as applicable on the 1<sup>st</sup> April of the financial year in which the period lies, plus five percent and in the absence of marginal cost of funds based lending rate, any other arrangement that substitutes it, which the Central Government may, by notification, in the Official Gazette, specify:

Provided that if the period of default lies in two or more financial years, the base rate of Late Payment Surcharge shall be calculated separately for the periods falling in different years;

(d) **“Due date”** means the date by which the bill for the charges for power supplied by the generating company or electricity trading licensee or for the transmission service provided by a transmission licensee are to be paid, in accordance with the Agreement, as the case may be, and if not specified in the Agreement, forty-five days from the date of presentation of the bill by such generating company, electricity trading licensee or transmission licensee;

(e) **“Default Trigger Date”** shall mean

- i. in case of non-payment of dues, one month after the due date of payment or two and half months after the presentation of bill by the generating company, electricity trading licensee or the transmission licensee, as the case may be, whichever is later, and;
- ii. in case of non-maintenance of the Payment Security Mechanism, shall be from the next day after the Payment Security Mechanism due for to be replenished but not done;

(f) **“Defaulting entity”** means a distribution licensee having outstanding dues of a generating company or electricity trading licensee or transmission licensee.

(g) **“Late Payment Surcharge”** means the charges payable by a distribution licensee to a generating company or electricity trading licensee for power procured from it, or by a user of a transmission system to a transmission licensee on account of delay in payment of monthly charges beyond the due date;

(h) **“Outstanding Dues”** means the dues of a generating company, electricity trading licensee, or a transmission licensee, which remains unpaid by the beneficiary beyond the due date and includes the amount of installment not paid after the redetermined due date under rule 4.

(i) **“Payment Security Mechanism”** means Letter of Credit (LC) or/and LC backed by Escrow Agreement as provided in the Agreement:

Provided that, advance payment shall constitute payment security if there are no outstanding dues;

Provided further that the payment security may be for a shorter duration or lower capacity in case of generating company, if there are no outstanding dues;

(j) "**Regulating Entity**" means the generating company or the electricity trading licensee or the transmission licensee, as the case may be, which notifies the Regional Load Despatch Centre or the State Load Despatch Centre, to regulate the power supply of the defaulting entity;

(k) "**Regulated Entity**" means the Defaulting Entity whose power supply is regulated in accordance with these Rules.

(2) 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. **Late Payment Surcharge.**- (1) Late Payment Surcharge (LPS) shall be payable on the payment outstanding after the due date at the base rate of Late Payment Surcharge applicable for the period for the first month of default.

(2) The rate of Late Payment Surcharge for the successive months of default shall increase by 0.5 percent for every month of delay provided that the Late Payment Surcharge shall not be more than three percent higher than the base rate at any time.

Provided that the rate, at which Late Payment Surcharge shall be payable, shall not be higher than the rate of Late Payment Surcharge specified in the Agreement, if any.

4. **Adjustment towards Late Payment Surcharge.** - All payments by a distribution licensee to a generating company or a trading licensee for power procured from it or by a user of a transmission system to a transmission licensee shall be first adjusted towards Late Payment Surcharge and thereafter, towards monthly charges, starting from the longest overdue bill.

5. **Liquidation of Arrears.**- (1) The outstanding dues including LPS upto the day of the notification of these rules shall be rescheduled and the due dates redetermined for payment by a distribution licensee in the following maximum number of equated monthly installments:

Outstanding dues amount (in Rs. Crore)	Maximum no. of equal monthly installments (months)
Up to 500	6
501 – 1,000	10
1,001 – 2,000	14
2,001 – 4,000	17
4,001 – 10,000	20
> 10,000	24

(2) Notwithstanding anything contained in rule 3, LPS shall not be payable on the outstanding dues on the day of the notification of these rules provided that the outstanding dues including LPS till the date of the notification of these rules are paid by a distribution licensee as per sub-rule (1).

(3) In case of delay in payment of an installment as per sub-rule (1), LPS shall be payable on the outstanding dues as on the date of notification of these rules.

**6. Operationalizing the Payment Security Mechanism and its consequences-** (1) A distribution licensee shall maintain unconditional, irrevocable and adequate Payment Security Mechanism.

(2) In case of non-maintenance of PSM, Generating Companies, electricity trading licensees and transmission licensees shall regulate power supply to the distribution licensee in accordance with these Rules.

(3) The supply of power at any time shall not be without the PSM or advance payment. In case the generating company supplies power without the PSM or without advance payment, it shall lose the right to collect the Late payment surcharge from the distribution licensee.

(4) In case of non-maintenance of PSM or non-payment of outstanding dues by the default trigger date, the obligation of the generating company to supply power shall be reduced to 75% of the contracted power to distribution licensee and balance 25% of contracted power may be sold by the generating company through the Power Exchange.

(5) If the Distribution licensee doesn't establish PSM or continues to default in payment of outstanding dues for a period of thirty days from expiry of the

notice as referred to in sub-rule (4), then the generating company shall be entitled to sell 100% of the contracted power through Power Exchanges.

(6) During the period of default, the distribution licensee shall continue to be liable for the payment of fixed charges or capacity charges as applicable under the Agreement.

(7) The gains from the sale of such power shall be calculated as the difference between selling price of such power in the power exchange and the expense borne by the generating company including energy charges, transmission charges and other incidental charges and shall be adjusted in the following order:

- (i) recovery of fixed charges;
- (ii) liquidation of overdue amount;
- (iii) the balance shall be shared in the ratio of 75:25 between the distribution licensee and the generating company.

**7. Regulation of Access to Defaulting Entities.-** In case of non-payment of dues even after two and half months from presentation of bill the power supply to the defaulting entity shall be regulated as follows:

1. Short-term access- access to the power exchange shall be regulated entirely.
2. If, even one month after the regulation of the short-term access or the dues have remained unpaid for three and a half months he apart from the regulation short-term access in its entirety the long and medium term access shall be regulated by 10 percent.
3. Reduction or with-drawal of long-term access and medium-term open access shall be in such manner that the quantum of reduction in drawl schedule increases progressively by 10 per cent for each month of default.

Explanation: Short-term open access means access to ISTS for periods up to one year, medium term open access means access to ISTS for one to three years and long-term open access means access to ISTS for periods of more than three years.

4. On payment of outstanding dues the regulation shall end at once.
5. NLDC shall issue detailed procedure to implement the regulation of access according to these rules.

6. In case of such reduction of drawl schedule, the liability for payment of capacity charges for its original share in the generating station as also the inter-state transmission charges shall remain with the Regulated Entity.

**8. Supply Obligation of the Generating Company.** - In case a Generating Company fails to offer the contracted power as per the Agreement to a distribution licensee and sells the contracted power without its consent to any other party, the said generating company, on a complaint to this effect by the licensee to the load dispatch centre concerned, shall be debarred from participating in power exchanges and scheduling of any new short term contracts from that generating station for a period of three months from the date on which the default has been taken cognisance by the concerned load despatch centre. The period of debarment shall increase to six months for second default and shall be one year for each successive default. Such debarment of the generating company shall be without prejudice to the rights of the distribution licensee for seeking compensation for the default by the generating company.

**9. Power not requisitioned by a Distribution licensee.-** (1) A distribution licensee shall intimate its schedule for requisitioning power for each day from each generating company with which it has an agreement for purchase of power at least one hour before the end of the time for placing proposals/bids in the Day Ahead Market for that day, failing which the generating company may sell the un-requisitioned power in the power exchange.

(2) The gain from the sale of such power shall be adjusted in the following order:

- (i) payment to generating company of upto 3 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.

(3) The gain will be calculated as the difference between selling price of such power in the power exchange and the expense borne by the generating company including energy charges, transmission charges and other incidental charges.

(4) The liability of payment of fixed charges towards the un-requisitioned power shall remain with the distribution licensee.

(5) In case a distribution licensee does not requisition power from a must-run power plant, the compensation shall be payable by the licensee to the generating company owning the must-run power plant at the rate specified in the agreement for purchase of power and if no rate is specified in the agreement then in accordance with the Electricity (Promotion of Generation of Electricity from Must-Run Power Plant) Rules, 2021.

**10. Order of Payment and Adjustment towards Late Payment Surcharge.-** All the bills payable by a distribution licensee to a generating company or a transmission company or a trading company for power procured from it, shall be time tagged with respect to the date and time of submission of the bill and the payment shall be made by the distribution licensee first against the oldest bill and then to the second oldest bill and so on so as to ensure that payment against a bill is not made unless and until all bills older than it have been paid for.

**11. Repeal. -** (1) The Electricity (Late Payment Surcharge) Rules, 2021 notified on 22<sup>nd</sup> February, 2021 is hereby repealed.

(2) Notwithstanding such repeal, anything done or any action taken under the Electricity (Late Payment Surcharge) Rules, 2021 notified on 22<sup>nd</sup> February, 2021 shall be deemed to have been done or taken under the corresponding provisions of this Rule.

**[No. 23/22/2019-R&R Part-4]**

**(Ghanshyam Prasad)**  
**Joint Secretary to the Government of India**