

F. No. 225/8/2018 -WE
Ministry of New & Renewable Energy
Wind Energy Division
Block-14, CGO Complex, Lodi Road, New Delhi-110003.

Dated: 25th January, 2019.

Office Memorandum

Sub: Draft Offshore Wind Energy Lease Rules, 2019 for comments/Suggestions-Reg.

The Ministry of New and Renewable Energy has notified National Offshore Wind Energy Policy in October, 2015 (available at <http://mnre.gov.in/file-manager/UserFiles/NationalOffshore-Wind-Energy-Policy-Gazette-notification.pdf>) for development of offshore wind energy projects for production of electrical power within the Exclusive Economic Zone (EEZ) of the country.

2. The Policy provides only a basic framework for development of offshore wind energy in the country. As per the policy the offshore wind energy blocks are to be allocated to successful bidders through international competing bidding only and the lease fees are to be collected by the designated nodal agency i.e. National Institute of Wind Energy (NIWE), Chennai. In order to regulate the leasing mechanism of offshore wind energy blocks, Lease Rules are required to be framed under the 'Territorial Waters, Continental Shelf, Exclusive Economic Zones and Other Maritime Zones Act, 1976'.

3. Draft Offshore Wind Energy Lease Rules framed by this Ministry is attached for comments/suggestions/views from various stakeholders. The comments may please be submitted to the undersigned at prabir.dash@nic.in by 25th February, 2019.

P K Dash (Scientist-C)
Tel: 24362267

Draft Offshore Wind Energy Lease Rules, 2019

In exercise of the powers conferred by sections 7 and section 15 of the Territorial Waters, Continental Shelf, Exclusive Economic Zones and Other Maritime Zones Act, 1976, the Central Government do hereby make the following Rules to regulate the grant of leases, which belongs to the Central Government, to the developers for development of Offshore Wind Energy projects along the coast line of India up to 200 NM (Nautical Miles) within the EEZ (Exclusive Economic Zone) thereof, namely:-

OFFSHORE WIND ENERGY LEASE RULES, 2019;

1. **Short title and commencement:-**

These rules may be called as Offshore Wind Energy Lease Rules 2019 They shall come into force on the --- day of -----, 2019

2. **Savings:** Nothing in these rules shall affect the provisions of the Territorial waters, continental shelf, exclusive economic zones and other maritime zones Act, 1976 or the Rules already made there-under.

3. **Definitions:** In these rules, unless the context otherwise requires.

- 'Company' means a commercial entity/corporate incorporated in India under the Companies Act, 1956 or the Companies Act, 2013 as applicable.
- 'Consortium' or 'Consortium' refers to a group of Companies that has collectively submitted the application/proposal for the seabed lease for development of offshore wind energy projects.
- 'Continental Shelf' means the seabed and sub-soil or submarine areas adjacent to the coast of India including its island but outside the area of its territorial waters, up to a depth of 200 meters or beyond that limit to where, the depth of the superjacent water admits of the exploitation of natural resources of the areas;
- 'Control' means holding not less than 26 percent of the paid-up share capital of a registered company.
- 'CUF' means capacity utilization factor of the off-shore wind power plant individually or more having a common off-shore pooling station and evacuation/transmission infrastructure.
- 'Decommissioning' means decommissioning of the Wind operated electricity generators with removal of equipment's, machinery, used cables as well as uprooting and demolition of the foundation structures and removing the debris as per relevant marine environmental norms.
- 'Drilling' means perforation of the earth's crust by mechanical means (irrespective of whether the hole caused by the perforation is vertical, inclined, or horizontal) and includes all operations for preventing collapse of the sides of such hole for carrying out geotechnical survey or piling of foundation structures required for Offshore Wind Energy project related machinery and equipment for production of electricity.

- An EEZ (Exclusive Economic Zone) is a sea zone, prescribed by the United Nations Conventions on the International Law of the Sea, over which a state has special rights regarding the exploration and use of marine resources, including energy production from water and wind. It stretches from the base coastal line **vertically** outward up to 200 nautical miles (NM) from the base coastal line.
- 'Entity' means an institution or a company or a group of companies or an affiliate or a consortium that has applied for a lease for offshore wind energy development activities including related studies/surveys.
- 'Geophysical survey' includes the examination of the exposed rocks on the sea bed, the collection of the necessary specimens of rocks and soil strata for investigations in the laboratory for preparation of geological maps and geological sections defining the seabed condition of different zones to help in designing the foundation structures for such offshore wind operated electric generators (wind turbines) for electrical power generation;
- 'Geotechnical drilling' means the drilling of bore-holes to source scientific information and other data's relating to soil and sub soil condition including assessment of its load bearing capacity with an immediate objective to setup the offshore wind projects.
- 'Group Company' means;
 - a. A company which, directly or indirectly, holds ten percent or more of the share capital of the mother company, or
 - b. A company in which the company, directly or indirectly, holds 10(ten) per cent or more of the share capital of such company, or
 - c. A company in which the company, directly or indirectly, has the power to direct or cause to be directed the management and policies of such company whether through the ownership of securities or agreement or any other arrangement or otherwise, or
 - d. A company which, directly or indirectly, has the power to direct or cause to be directed the management and policies of the Company whether through the ownership of securities or agreement or any other arrangement or otherwise, or
 - e. A company which is under common control with the company, and control means ownership by one company of at least ten percent of the share capital of the other company or power to direct or cause to be directed the management and policies of such company whether through the ownership of securities or agreement or any other arrangement or otherwise provided that a financial institution, scheduled bank, foreign institutional investor, non-banking financial company, and any mutual fund shall not be deemed to be Group Company, and its shareholding and the power to direct or cause to be directed the management and policies of a company shall not be considered for the purposes of this definition unless it is the Project Company or a Member of the Consortium developing the Project.
- 'Inter-connection/Delivery/Metering point' means the point at 220 kV or above where the power from the offshore wind power project(s) will be injected into the In-STS/ISTS. Metering shall be done at this interconnection point where the power will be injected into the In-STS/ISTS i.e. the Delivery point. For interconnection with grid and metering, the offshore wind power projects shall abide by the relevant CERC Regulations, Grid Code, and Central Electricity Authority Regulations as amended and applicable from time to time.

- 'In-STTS' means Intra-State Transmission System.
- 'ISTS' means Inter-State Transmission System.
- 'Lead Member of the Bidding Consortium' or 'Lead Member': There shall be only one Lead Member, having shareholding more than 51 percent in the Bidding Consortium, which cannot be changed till one year from the Commercial Operation Date (CoD) of the Project.
- 'Offshore Wind Energy projects means, deployment of Wind operated Electricity generators within the exclusive economic zones of the Country (200 nautical miles from the coast line on the sea bed to generate electrical power in natural sea environment for exploitation of wind energy potential, assessed through various resource assessment/studies/investigations.
- Paid-up share capital' means the paid-up share capital as defined in Section 2 of the Company Act, 2013.
- 'Parent company' means a company, which holds not less than 51 percent equity, either directly or indirectly, in the Project Company or a Member in a Consortium developing the Project.
- 'Pooling Substation/Pooling Point' means, a point where more than one Wind operated Electricity Generators are connected to a common transmission system. Multiple Off shore wind energy projects can be connected to a common pooling substation from where common transmission system shall be constructed and maintained by the developer(s) to get connected to the onshore substation. The voltage level for such common line shall be 220 kV and above. Further, the metering of the pooled power shall be done at the injection point, i.e. the onshore substation. However, the voltage level of transmission system of individual projects up to the pooling substation may be at 33 kV and above. Sub-meters shall be installed at the pooling substation for metering and forecasting & scheduling of individual projects. The losses in the common transmission system up to the injection point shall be apportioned to the individual projects for the purpose of billing.
- 'Potential zones' means area where Wind Energy can be harnessed economically;
- 'Prospecting of wind potential' with its grammatical variations, means search for Wind Energy potential across the seabed (within the EEZ) along the coast line;
- 'Project Capacity' means the maximum AC capacity at the point of injection on which the Power Purchase Agreement shall be signed.
- 'The Act' means Territorial waters, continental shelf, exclusive economic zones and other maritime zones Act, 1976.
- 'Territorial waters' means the belt of sea adjacent to the coast of India including its islands or extending into the sea to a distance of 12(Twelve) Nautical Miles (NM) measured from the appropriate base coast line;
- 'Ultimate Parent' means a company, which owns not less than 51 percent equity either directly or indirectly in the Parent and Affiliates.
- 'Wind Power' means harnessing electrical power by use of Wind operated electricity generators commissioned on the sea bed in the natural sea environment;

4. **Installation, Commissioning and prospecting of offshore wind energy under a lease:** No person/entity shall install/Commission Offshore Wind energy Project except in pursuance of an offshore wind energy lease granted under these Rules. Every holder of a lease shall in these rules be referred to as the lessee. Activity related to assessment of offshore wind energy potential through related studies and surveys are also to be undertaken under a lease only.
5. **Grant of lease:** A lease in respect of any offshore area/zone within the territorial waters or continental shelf within EEZ of India vested in the Union shall be granted by the Ministry of New and Renewable Energy (Government of India).
 - a. Every lease shall contain such of the terms covenants and conditions prescribed as in this rules and additional terms, covenants and conditions that may be stipulated in the agreement between the Central Government and the lessee, are applicable. Provided that where the lease has been or is to be granted by the State Government, the Central government may consult the State Government before agreeing to such additional terms, covenants and conditions.
 - b. The Central government, if it deems fit, may notify the basis on which the Central Government may be prepared to consider proposals for prospecting of Wind energy generation in any specified areas within the EEZ from time to time in the official Gazette.
6. **Right of the licensee and the lessee:** Subject to the Act or Rules made here under and subject to terms of agreement that may be arrived at between the Central Government and the lessee after consultation with the State Government and other stakeholders :-
 - i. Every lessee shall have the exclusive right to carry out, in addition to geological and geophysical surveys data, other studies relating to Geo-Technical survey and investigations and testing operations required for development of Offshore Wind Energy Installations or/and related activities in the area covered under the lease but shall not have the overall right to a sublease any part of the area covered under the lease.
 - ii. Every lessee shall have the exclusive right to conduct the development work such as construction of buildings, plants, waterways, roads, evacuation infrastructure (cables), off shore substations, telephone lines, under water electric cables and other structures and equipment as are necessary for the full enjoyment of the lease or for fulfilling his obligation under the lease. The lessee shall have no right to minerals and other resources in the lease area.
 - iii. Every lease shall have no right to block/bar/restrict the entire area under this lease from any routine activities, as felt necessary for the purpose of livelihood and other activities that could coexist with the off shore wind energy Farm, in the interest of common public. These activities should not have potential to harm the project.
 - iv. The lease does not confer any right for extraction of minerals, materials and other resources beneath the sea bed and sea water.
7. **Date of effect of leases:** Every lease shall be effective from the date specified in this behalf in the lease.

OFF SHORE WIND ENERGY EXPLORATION LEASE;

8. **Area and term of lease:** The area covered by a lease shall be specified therein and the terms of a lease shall in the first instance be valid for a period of five years (5) for prospecting and thirty (30) years for establishment of offshore wind power project which may be extended on renewal

of the lease for five years at a time with due approval of Government of India. The area, covered under a lease, shall ordinarily be 100-500 square kilo meter depending on the size of the Offshore Wind Energy Farm.

9. Security deposit, annual lease fee and shedding of areas:

- a. The applicant, for a lease, before the lease is granted to him, shall deposit a sum of Rs.1,00,000/- (Rupees One Lakh) per Mega Watt installations in case of offshore wind energy project and Rs. 1000/- (one thousand) per Sq. km area in case of prospecting, with the Central Government or with the lease issuing authority as security for due observance/scrutiny of the terms, covenants and conditions of the lease.
 - b. The applicant shall pay yearly lease fee, a sum calculated for each square kilo meter or part thereof covered by the lease at the rate of Rs.10000 (Rupees ten thousand only) every year for 5/30 years (as the case may be) in advance in respect of his lease as advance lease fee. In case of lease for prospecting, the lessee may surrender the lease after the prospecting is over and the lessee will not be required to deposit such fee.
 - c. The lessee shall be at liberty to determine the acceptance of the lease for the entire area he has applied for or relinquish any part of the area covered by the lease on giving not less than two months' notice in writing to the Central Government.
10. Power to Relax: Provided that the Central Government may, if satisfied that it is necessary in public interest to do so, by notification, relax the condition regarding area and fee in relation to any application for lease.
11. No Royalty will be applicable for the development of Offshore Wind Energy Projects.

Other Provisions relating to Leases

12. **Identification of areas:** Within three months from the date referred to in Rule 7, the lessee shall display notices at all conspicuous points on the area covered by the lease so as to indicate its boundaries and shall thereafter during the term of such lease maintain such notices to the satisfaction of the Central Government and other stakeholders including the State Government.
13. **Transfer or Assignment:** The lessee shall not assign or transfer his right, title and interest in respect of the lease or in respect of the area or mineral underlying the ocean within the territorial waters or the continental shelf of India covered by such lease granted by the Central Government without the consent of the Central Government in writing and in the case of land covered by a lease granted by the State Government (for onshore infrastructure required for the offshore wind energy project), without the consent in writing of the Central Government being first obtained through the State Government.
14. **Pre-emption:**
- a. In the case of a national emergency the Central Government shall, at all times, during such emergency, have the right of pre-emption of the lease for power generation from such projects where the lessee is permitted to generate and sell power to buying entities; provided that the price prevailing at the time of pre-emption shall be paid to the lessee by the Central Government for the Power taken in pre-emption.
 - b. The Central Government shall be the sole judge as to what constitutes a national emergency in respect of off shores Wind Energy and its decision in this respect shall be final.

15. General Provision:

The lessee shall:-

- a. Maintain in good repair and conditions all equipment's machinery, infrastructure and Wind turbines capable of producing power on the area covered by the lease.
- b. Execute all prospecting or installation commissioning and operations of Wind Energy project with proper workmanship in accordance with methods and practice as per international standards and abide by all instructions, directions and orders that may be given pursuant to any Rules.
- c. Upon the termination of the lease or upon the relinquishment of any area covered by it shall furnish to the Central Government confidentially complete records of all the data such as surface geological maps and sections, magnetic and gravity measurements and anomaly maps, seismic profiles, sections and structure contour maps, electrical and telluric current survey data, and other information which have a direct or indirect bearing on the Offshore Wind Energy possibilities in the area, collected by the licensee or the lessee or his agents or contractors.

Suspension and Cancellation

16. Suspension of conditions of lease:

- a. Upon written application being made by the lessee, the Central Government considers that adequate reasons have been furnished, the lease has been granted by it.
- b. If Central Government (Lease granting authority) for periods not on any occasions exceeding six months, suspension of any or all of the terms, covenants or conditions relating to the working of the area covered by the lease.
- c. The Central Government, if it authorizes suspension as aforesaid, impose such conditions as it may think fit for the protections of any equipment's and infrastructures under the projects on such area, or for the protection of any other purpose whatsoever and the lessee shall comply with such conditions as if they are incorporated in the lease.

17. Cancellation of leases:

If the lessee or the executor, administrator or assignee at any time during the term of the lease:-

- a. Fails to fulfil, or contravenes, any of the terms, covenants and conditions contained therein, or
- b. Fails to use the area covered by it for the bonafied purposes for which it has been Granted, or
- c. Uses of such area for a purpose other than that for which it has been granted, or
- d. Causing environmental damage both flora & fauna beneath the sea water and posing threat to human life and property while carrying out the activities under water and operation of the wind energy turbines during validity of the lease.

The Central Government may, where it is satisfied that the failure, contravention or use is such as cannot be remedied, on giving thirty days' notice to such person and after considering the representation, if any, made by him, forfeit the whole or any part of the security deposit made under clause 9 (a) of this rule, cancel the lease. Such cancellation shall be published in the

Official Gazette and shall take effect from the date of such publication. If the failure, contravention or use is considered to be of remediable nature, the Central Government may give notice to such entity/lessee requiring him to ensure remedy of the same within a specified time granted for the purpose from the date of receipt of the notice and informing him that the penalty as aforesaid may be imposed if such remedy is not provided within such period

Provided that, the failure on the part of such entity/ lessee to fulfil any of the terms, covenants and conditions of the lease shall not give the Central Government any power to impose the penalty as aforesaid in so far as such failure arises from the force majeure and if through force-majeure the fulfilment of any of the terms, covenants and conditions of the lease is delayed, the period of such delay shall be added to the period fixed by the lease for the performance of any act. "Force majeure" includes an act of God, war, insurrection, riot, civil commotion, high tide, storm, tidal wave, flood, lightning, explosion, fire, earthquake, and any other happening which the licensee or the lessee could not reasonably prevent or control.

- ii. A lease may be cancelled either wholly or part by the Central Government where such lease has been granted by it, upon the written request of the lessee or, where there are two or more of them, of not less than one-half of their number, and such cancellation shall be published in the Official Gazette and shall take effect from the date of such publication.
- iii. If during the term of a lease any part of the area covered by it, is required for any public purpose, the Central Government, may upon one month's notice and after considering the representation, if any, made by the entity/ lessee concerned cancel such lease in so far as it relates to the said part of the area subject to such restrictions and conditions as it may impose, and such cancellation shall be published in the Official Gazette and shall take effect from the date of such publication.

18. Delivery of premises upon termination of lease:

- a. Upon termination of the lease under these Rules the lessee shall deliver up the area held by it under the lease.
- b. At any time within six months after the termination of the the lease under these rules or within such further time as the Central Government, may allow, the former lessee may, subject to these rules, remove or dispose of any Offshore Wind Energy project components such as wind turbine or its parts/ equipment/machinery/cables/electrical infrastructures and civil infrastructures recovered, during the currency of such lease, and all stores, equipment, tools and machinery and so much of the improvements on the area covered by the lease as the Central Government. In case the lessee desires to keep the installations in full or part, or requires time extension, the same may be considered by the central government (leasing authority) and a written permission will be issued to this effect.
- c. If such stores, equipment, tools, machinery and other infrastructures are not so removed or disposed of, they may be sold by auction by order of the Central Government the case may be, at the risk of the former lessee. The proceeds of such sale shall be held by the Central Government, or by the State Government, as the case may be, until applied for and obtained by him. The entire cost in this process will be borne by the lessee.

19. Spacing of Wind Energy Turbines and Off Shore Substations:

The Central Government may issue instructions from time to time depending on the requirements or as per prevailing international norms for;

- a. The spacing of Wind Turbines; and
- b. The spacing of Offshore substations

20. Restriction of generation:

The Central Government may, in the national interests such as grid stability/security, by general or special order, restrict the amount of electricity generation that may be produced by a lessee in a particular offshore area.

21. Regulations of operations:

The Central Government or its authorized agencies may notify prescribed technical standards and regulations to regulate the installation, commissioning and operation by a lessee in an offshore area.

22. Control of operations to prevent misuse of the offshore zones/areas and malfunctioning of the Wind Turbine installations posing threat to public life and property:

The Central Government may after reasonable notice to the lessee:-

- a. Assume control of the operation of offshore Wind Turbines (Wind operated electricity generators) in isolation or in groups within a particular zone/area and adopt such means, as may appear to it necessary or expedient, to prevent misuse of the lease area and malfunctioning of the Wind Turbine installations posing threat to National security, environmental protection, public life and property.
- b. For the above purposes appoint such agents, as may be deemed necessary and authorize them to enter upon the Sea premises, where Wind Turbines installed in large numbers and is not being used for the purpose for which the lease has been granted or the Wind Turbines installations are posing threat to public life and property, and take over the possession of the area to perform the work relating to remedial measures and/or repair and maintenance of the projects and use the machinery and other appliances or materials necessary for the performance of the such work which may be upon the location or which may be in the possession or control of the lessee; and
- c. Recover from the lessee all the costs and expenses incurred in the performance of the operations so undertaken by the Central Government.

23. Suspension of operations:

No lessee shall:-

- a. Suspend normal power production from Wind Energy installations;
- b. Suspend exporting power to the Onshore pooling station;
- c. Abandon the projects;
- d. Re-powering the Offshore Wind Farm beyond sanctioned capacity;

- e. Resume production operation after a previous suspension without giving to the Central Government at least a fortnight's prior notice of any or all of the aforesaid actions, provided that, if normal production operations have to be suspended immediately due to any unforeseen reason, notice thereof shall be given to the Central Government within twenty four hours of such suspension.

24. Shutting down of Wind Farm:-

- a. If the Central Government is satisfied, after holding an enquiry that an Offshore Wind Farm is being operated in such a way that any provision of these rules or any order of the Central Government pursuant to these rules has been or is being contravened, the Central Government may order that, on and after a date to be fixed by the order, no generation is to be permitted from the Wind Farm and that it is to be shut down and kept shut down until such time as the Central Government may specify.
- b. If, in the opinion of the Central Government, operation of the wind turbines/wind turbines is causing damage to environment or damage to property, or pollution can thereby be prevented, the Central Government may order the Wind Farm to be shut down pending an enquiry under sub-rule (a), which enquiry shall be held within a reasonable period of the making of such order.

25. Agency for supervision:

- a. For the purpose of ascertaining whether the provisions contained in this rule and any orders, instructions and directions issued there-under have been or are being complied with by the lessee and whether the prospection or Wind Energy production operations are being carried on by him in accordance with these rules, the Central Government may, by nominating a suitable agency consisting of such number of persons as the Central Government thinks fit.
- b. It shall be the duty of such agency for the purpose aforesaid to supervise from time to time the production of energy (Electricity) from such projects to ensure the optimal efficiency and delivery and submit its report to the Central Government accordingly.
- c. The agency may, in order to carry out its functions under these rules, depute any person authorized by it in this behalf to enter into and inspect any Wind Energy Farm/Project site to supervise the day to day operations and functional efficiency.

26. Penalties:

- a. All lease fee and other payments under these rules shall, if not paid to the Central Government within the time specified for such payment, be increased by ten per cent for each month or portion of a month during which such fees or other payments remain unpaid.
- b. Subject to these rules, if any lease fee or other payment due in respect of a license or lease is in arrears for more than three months, the Central Government may cancel such lease and shall take effect from the date of such publication.
- c. If the holder fails to comply the terms and conditions of the lease without sufficient reasons or to furnish the required information's in any manner as per the provisions under this rule, if detected during the inspections authorized by the Central Government, shall be punishable with imprisonment for a term of six months with determined fine by the Central Government. Failure to pay fine by the lessee would entail imprisonment for further period of six months.

- d. Whoever, after having been convicted of any offence referred to in sub-rule (a), continues to commit such offence shall be punishable for each day after the date of the first conviction during which he continues so to offend, with fine which may extend to one thousand rupees.

Miscellaneous

27. Arbitration of disputes:

Every lease shall be subject to the following term, namely:-

Any dispute (including a dispute regarding the evacuation of power between the Government and the licensee or the lessee regarding -

- a. Any right claimed by the lessee under the lease, or
- b. Any breach alleged to have been committed by the lessee or any of the term, covenants of the lease, or any penalty proposed to be inflicted thereof; or
- c. The fees or rents payable under the lease, or
- d. Any other matter or thing connected with the lease shall be settled by two arbitrators, one to be nominated by the Central Government and the other by the lessee; or, in case of disagreement between the arbitrators, by an umpire appointed by the arbitrators by writing under their hands before proceeding with arbitration.

The expenses of the arbitration expenditure shall be borne by the lessee. The Arbitrators or the umpires, as the case may be, from time to time, with the consent of all the parties to the contract enlarge the time for making the award. Subject to the aforesaid, the provisions of the Arbitration Act 1940 and the Rules thereunder for the time being in force, shall apply to the Arbitration proceedings under this clause.

28. Power to exempt from operation of certain rules:

(i) The Central Government may grant exemption, subject to specified conditions to a lessee from the provisions of Rule 9 sub rules a, b and c) and Rule 10 where it is in the public interest to do so,

(ii) The Central Government may consult the Concerned State Government in the matter of granting exemptions in respect of sea bed areas under sub-rule (i)