



The national lock-down has been extended till May 3, 2020. We set out the impact on renewable energy projects in India.



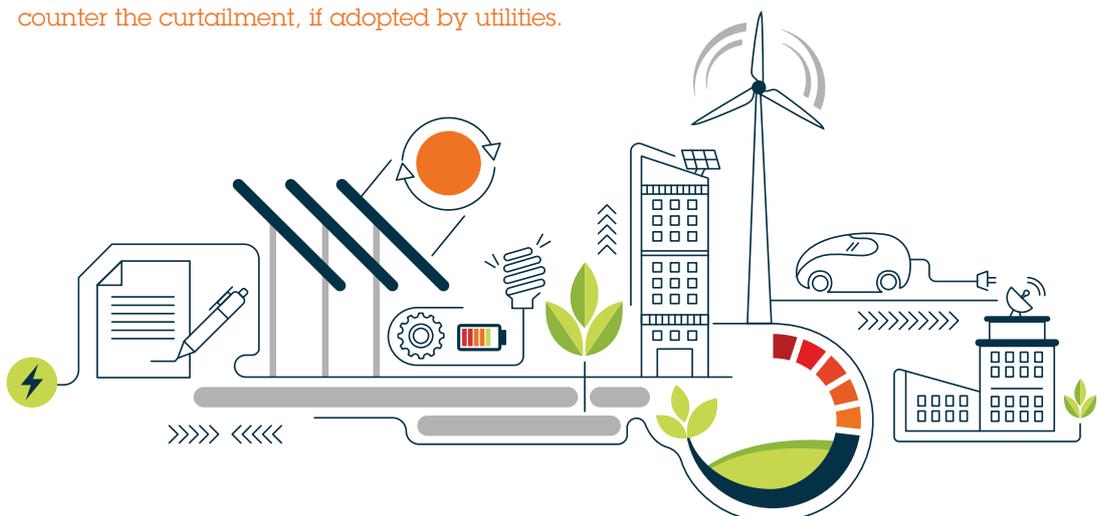
Operational projects

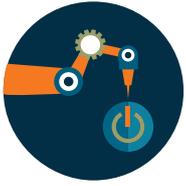
In the early days of the lockdown, many State governments imposed restrictions on movement and assembly of people, by imposing Section 144 of the Code of Criminal Procedure, 1973 or enacting their own regulations for epidemic diseases. Although power (including power generated by renewable energy sources) was declared as an 'essential service' on March 24, 2020 by the Ministry of Home Affairs, this impacted many operational renewable energy projects. The Ministry of New and Renewable Energy ("MNRE") also clarified this on April 1, 2020, granting a 'must-run' status to renewable energy generating stations and clearly declared that this 'must-run' status would remain unchanged throughout the lockdown period. However, in our experience, some service providers did issue force majeure notices to power generators regarding their inability to provide services or maintain supply chain at some project sites, mainly due to local and inter-district transport/movement and labour-related issues.

Although each case will be fact-specific, official notifications from the Ministry of New and Renewable Energy and Ministry of Power should provide sufficient basis for a response to a notice of force majeure issued by a service provider.

While the Ministry of Power allowed a 3-month concession till June 30, 2020 to DISCOMs by relaxing the requirement of prepayment/providing letter of credit by 50% of the cost of scheduled power and also asked the Central Electricity Regulatory Commission to reduce the late payment surcharge for delay in payments by DISCOMs, some DISCOMs also declared that they would invoke 'force majeure' provisions in their contracts with generators to withhold release of payments and began curtailing power. The MNRE clarified on April 4, 2020 that any curtailment of renewables other than for grid safety reasons would amount to 'deemed generation' and directed that payments to renewable energy power generators should be regularly made as electricity from such sources comprises only a minor portion of total electricity generation in India.

Generators to take note of this in case of refusal by relevant DISCOM to make payment and to counter the curtailment, if adopted by utilities.





Projects under construction

On April 17, 2020, MNRE declared that renewable energy implementing agencies may grant extension of time for projects under construction, equivalent to the period of lockdown and an additional 30 days for normalisation after end of the lockdown. This is a blanket extension, with no need for case-to-case examination or production of any evidence of such delay. The lockdown due to the COVID-19 situation has also been declared officially as a 'force majeure' event.

Developers of projects under construction will benefit and do not need to apply separately for extension.

Further, the Ministry of Home Affairs, Government of India issued revised lockdown guidelines on April 15, 2020 vide Order No. 40-3/2020-DM-I (A), applicable in the 'extended' lockdown period (till May 3, 2020). As per the revised guidelines, which are in effect from April 20, 2020, construction of renewable energy projects which do not fall within containment, quarantine or designated 'hotspot' zones, may be resumed.

EPC contractors and developers to note that labour/ workman availability within certain districts/ States could impact this resumption to some extent, as public transportation continues to be prohibited till May 3, 2020. However, EPC contractors/developers must take care of health of workmen and social distancing directions, in view of COVID-19 situation.

While the on-ground and actual working of the relaxation may take a few days to implement once in effect, free movement of supply chain of goods remains a concern. Most manufacturing activity had been brought to a halt with the implementation of the nation-wide lockdown. While measures such as permitting movement of goods and functioning of ports are positive measures, certain restrictions on manufacturing activities continue (unless the industry/factory is located in a rural area or within SEZ/export oriented units/industrial townships) till May 3, 2020.

General permission for transportation of goods/cargo will benefit some manufacturers/ suppliers who have existing supply inventory. Some developers and/or suppliers may need to re-look at their contracts and delivery schedules to assess what work can proceed or renegotiate milestone/ payment and delivery terms. For industries within designated areas, special measures are to be taken to ensure workman health and security.



Financing

On March 28, 2020, the Ministry of Power issued directions to the Central Electricity Regulatory Commission for reduction of late payment surcharge (as to be confirmed by CERC) and concession of 50% of cost of scheduled power for maintenance of letter of credit by DISCOMs, whereas Reserve Bank of India has already provided a 3-month moratorium on repayment of outstanding loans and interest on working capital. This financial relief has been extended only to DISCOMs, and no specific financial relief has been announced for power generators or developers by MNRE as yet.

Banks have so far not offered similar relief measures to generating companies or developers. Generating companies may approach banks as per RBI notifications on a case-by-case basis to renegotiate facility terms in view of increased costs due to COVID-19 situation, including on account of supply chain disruptions.



Impact on Consumers

Due to the nation-wide lockdown, renewable energy consumers which included industrial and commercial establishments, were also shut down. To alleviate this, DISCOMs (such as Maharashtra State Electricity Distribution Company Limited ("MSEDCL") on April 1, 2020) have issued press notes, setting out tariff-related measures to mitigate the impact of the COVID-19 situation on electricity consumers. MSEDCL has announced a moratorium on payment of fixed charges of the electricity bill by consumers under 'Industrial and Commercial' category for next three billing cycles, beginning from March 25, 2020. States such as Madhya Pradesh, Haryana, Rajasthan, Uttar Pradesh and Gujarat have also implemented similar policies for agricultural or industrial/ commercial consumers, including extending bill payment deadlines.

If you are a renewable energy consumer in a State which has announced such a measure, this moratorium or extended time period for payment will apply to you.

Please click [here](#) to access our other COVID-19 related updates and [here](#) for an analysis on invoking force majeure provisions in contracts.

Contact us: E: practicemanager@btg-legal.com.
T: +91 22 6177 2900 / 2482 0820 | www.btg-legal.com
Mumbai | Bangalore | Delhi