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BEYOND FIXED DEPOSITS: DECOMMISSIONING SECURITY, CORPORATE INSOLVENCY AND SEABED RESTORATION UNDER INDIA'S OFFSHORE WIND ENERGY LEASE RULES, 2023

~ Mohammed Junaid Ullah Khan

Abstract

India's transition towards offshore wind energy required a regulatory framework that addresses not only electricity generation but also the environmental and financial liabilities arising when projects reach the end of their operational lives. The Offshore Wind Energy Lease Rules, 2023 established a framework for offshore leasing, security deposits and decommissioning. In September 2024, the Ministry of New and Renewable Energy (MNRE) circulated proposed amendments intended to clarify the leasing framework, expand the scope of covered projects and streamline administrative requirements. This however was not formally notified in the Official Gazette. This article examines Rules 9, 16 and 17 alongside a comparative study on offshore decommissioning. It argues that the regulatory framework should provide for periodic reassessment of financial security, proportionate supplementary guarantees when material financial risks arise and verify seabed restoration before security is released.

I. INTRODUCTION

Offshore wind energy presents India with an opportunity to expand its renewable energy portfolio and reduce dependence on conventional sources of electricity. The legal and environmental responsibilities associated with offshore projects, however, extend beyond construction and operation. Turbines, foundations, cables, substations and related infrastructure may remain in marine environments after electricity generation ends. Their removal, disposal or justified retention requires financial planning, regulatory supervision and enforceable legal obligations.

The Offshore Wind Energy Lease Rules, 2023 were notified through GSR 901(E) dated 19 December 2023 under section 15 of the Territorial Waters, Continental Shelf, Exclusive Economic Zones and Other Maritime Zones Act 1976.[1] Administered by the

Ministry of New and Renewable Energy, the Rules establish the principal leasing framework for offshore wind development in India.

The effectiveness of this framework depends not merely upon the grant of leases but also whether developers can meet their environmental obligations when projects terminate. A lessee may possess sufficient resources when a project begins but meet financial distress decades later. Meanwhile, the costs of vessel mobilisation, dismantling, waste management and seabed restoration may rise. Where the available security is inadequate, the State may face pressure to intervene, potentially transferring the cost of a private undertaking to the public.

II. THE STATUTORY FRAMEWORK

Rule 9 addresses the security deposit (calculated at 1 lakh rupees per MW) and the annual lease fee (prescribed at 1 lakh rupees per square kilometre of the allocated lease area)[2]

Beyond initial financial exactions, the operational exit is governed *by Rule 16* Decommissioning *and Rule 17* Delivery of premises upon termination of lease.[3]

Rule 9 mandates that a lessee shall provide ‘a refundable security deposit of ₹1 lakh per MW for an offshore wind-energy project and ₹50,000 per MW for a separate offshore transmission project.’[4] The prescribed amount may provide an initial safeguard yet its existence does not establish that it will remain adequate throughout the operational life of the project. Capacity-based calculations offer administrative simplicity but may not capture differences in water depth, foundation design, cable configuration, seabed conditions, waste-management requirements and the availability of specialised vessels.

In September 2024, the Ministry of New and Renewable Energy circulated draft amendments to the Offshore Wind Energy Lease Rules, 2023 for stakeholder comments.[5] The proposed changes addressed the definition of a lease, the scope of covered offshore renewable energy

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[1] Territorial Waters, Continental Shelf, Exclusive Economic Zones and Other Maritime Zones Act 1976, s 15, Offshore Wind Energy Lease Rules, 2023, GSR 901(E).
[2] Offshore Wind Energy Lease Rules, 2023, r 9.
[3] ibid rr 16, 17.
[4] ibid r 9(1).
[5] Ministry of New and Renewable Energy, 'Proposed Amendments to the Offshore Wind Energy Lease Rules, 2023 for Stakeholder Comments' (September 2024).

projects, lease duration and the clearances required before the grant of a lease. The proposals sought to clarify the administrative framework and expressly recognise infrastructure such as offshore substations and cables. These proposals form part of the regulatory history relevant to offshore wind development, but they should not be described as operative law unless a final amending notification is verified.

The consultation does not establish that a general requirement for periodic reassessment of decommissioning security or supplementary guarantees triggered by deterioration in a lessee's financial condition has been adopted. Administrative clarification of leasing requirements does not necessarily resolve the separate question of how decommissioning will be financed if the operator cannot fulfil its obligations.

III. FINANCIAL SECURITY AND PROBLEMS OF CHANGING COSTS

A fixed deposit may become disconnected from the liability it is intended to secure. Offshore wind projects can operate for several decades, during which inflation, technological changes, environmental requirements and the availability of specialist equipment may materially affect the cost of dismantling installations. The security available at the time of default may therefore be substantially less than the amount required to complete decommissioning.

This problem is recognised in a relative study. Colin Mackie and Anne P M Velenturf examine weaknesses in the financial-security arrangements governing offshore renewable energy decommissioning in United Kingdom waters, including uncertainty in cost estimation, regulatory discretion and the risks associated with accumulating security over time.[6] Their work demonstrates that a statutory requirement to provide security is not, by itself, sufficient to guarantee that the eventual liability will be funded.

India should accordingly distinguish between establishing security at the commencement of a project and maintaining its adequacy throughout the project lifecycle. Periodic review would allow the competent authority to compare the existing security with an independently defensible estimate of the remaining decommissioning liability. Reassessment should also be prompted by material changes in project design, the expected cost of removal or applicable environmental requirements.

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[6] Colin Mackie and Anne P M Velenturf, 'Trouble on the horizon: Securing the decommissioning of offshore renewable energy installations in UK waters' (2021) 157 Energy Policy 112479. https://www.sciencedirect.com/science/article/pii/S0301421521003499

A transparent review mechanism would protect both the public interest and regulatory certainty. Developers should know the methodology used to calculate any shortfall, the circumstances in which an adjustment may be required and the period allowed for compliance. Clear criteria would reduce the risk of arbitrary demands while ensuring that security does not become ineffective through the passage of time.

IV. CORPORATE INSOLVENCY AND SUPPLEMENTARY SECURITY

Corporate insolvency presents a separate problem. Where a lessee enters insolvency proceedings, its assets may be insufficient to meet creditor claims and the cost of removing offshore infrastructure under the Insolvency and Bankruptcy Code, 2016.[7] A government authority may possess a legal right to require decommissioning, yet that right may not provide the immediate resources needed to carry it out.

The regulatory framework should therefore allow supplementary security where a documented reassessment demonstrates that existing provision is inadequate or where objectively defined indicators establish a substantial deterioration in the operator's capacity to fulfil its obligations.

The power to require additional security must be proportionate. Unrestricted discretion could create uncertainty for developers and disproportionately burden smaller operators. The applicable rules should specify the grounds for reassessment, the method for determining the shortfall and the procedure for responding to a proposed demand.

Possible instruments include an appropriately structured bank guarantee, an independently managed decommissioning fund or another legally enforceable arrangement. Their adequacy should depend upon accessibility, enforceability and resilience to the operator's financial failure. A guarantee from an affiliate whose financial position is inseparable from that of the lessee may offer limited protection during a wider corporate crisis.

The purpose of supplementary security is not to penalise an operator for financial distress. It is to prevent that distress from transferring any foreseeable environmental liability to the State and the public.

V. DECOMMISSIONING AND SEABED RESTORATION

Financial security is effective only when it supports clearly defined and enforceable decommissioning outcomes. Rule 16 dictates that a lessee must complete decommissioning

[7] Insolvency and Bankruptcy Code, 2016

within **two years** of lease termination, ensuring that all materials are reused, recycled, or responsibly disposed of.[8] However, Rule 16 delegates the core technical mechanics to a secondary mechanism, stipulating that the Central Government "shall issue a separate guideline" for offshore wind project decommissioning.[9] Similarly, Rule 17 governs the formal delivery and handover of the premises upon termination.[10]

Relying on future, unreleased executive guidelines leave a dangerous regulatory space. Decommissioning may involve removing massive turbines, subsea machinery, interconnected cables, and deep embedded foundations. Poorly planned removal can mix up marine sediments and damage marine habitats just as much as leaving abandoned installations behind, which in turn pose continuing environmental and navigational hazards.

Effective implementation of Rules 16 and 17 requires statutory clarity regarding the scope of mandatory removal, the treatment of buried cables and foundations, waste disposal protocols, and residual seabed disturbance criteria. To close this gap, operators should be required to submit a comprehensive decommissioning plan well in advance of operational termination, detailing exact removal methodologies, cost estimates, and restoration criteria. Furthermore, security deposits must not be released automatically upon the lapse of the two-year window or upon a developer self-declaring completion. Release should be strictly conditional upon independent technical verification by a competent authority that Rules 16 and 17 Compliance has been fully satisfied.

VI. INDIAN ENVIRONMENTAL JURISPRUDENCE

In *Indian Council for Enviro-Legal Action v Union of India*, the Court affirmed the responsibility of polluting industries to bear the costs of remedying the environmental damage they caused.[11] While the judgment did not concern offshore wind decommissioning, its reasoning supports the proposition that remediation costs should not ordinarily become a public financial obligation merely because the responsible enterprise cannot or does not pay.

In *M C Mehta v Kamal Nath*, the Supreme Court applied the ‘public trust’ doctrine to the State's responsibility for protecting natural resources held for public benefit.[12] The doctrine reinforces the need for public authorities to exercise their powers in a manner that protects environmental

[8] Offshore Wind Energy Lease Rules, 2023, r 16(2).
[9] ibid.
[10] ibid r 17.
[11] *Indian Council for Enviro-Legal Action v Union of India* (1996) 3 SCC 212.
[12] *M C Mehta v Kamal Nath* (1997) 1 SCC 388.

resources against unjustified degradation. In the offshore context, it supports regulatory scrutiny of whether the termination of a private lease leaves the seabed subject to avoidable damage or obstruction.

These judicial precedents do not directly prescribe periodic assessment of security deposits or supplementary bank guarantees. They provide the doctrinal basis for designing a system that prevents foreseeable environmental liabilities from being externalised. The specific financial mechanism remains a matter for legislation, rules and lawful administrative action.

VII. CONCLUSION

India's offshore wind ambitions require a legal framework capable of addressing the entire lifecycle of a project, including its termination. A prescribed security deposit and a statutory decommissioning obligation are necessary safeguards, but their effectiveness depends upon continuing financial adequacy, enforceability during insolvency and verification of environmental performance. Rules 9, 16 and 17 of the Offshore Wind Energy Lease Rules, 2023 should therefore be understood as components of a single regulatory framework governing financial responsibility and environmental restoration.

The principal reform should be the introduction of periodic reassessment of decommissioning security, ensuring that financial provisions remain commensurate with actual removal costs over time. Furthermore, complementing these reviews with bankruptcy-remote supplementary instruments prevents corporate insolvency from transferring cleanup burdens onto the public. Finally, tying the release of security to verified seabed restoration aligns renewable energy growth with the polluter-pays principle, and public trust doctrine.[13] By intertwining financial adequacy, insolvency resilience, and environmental accountability, India can secure its coastline against abandoned infrastructure and avoid unnecessary public expenditure.

[13] *Indian Council for Enviro-Legal Action v Union of India* (n 10); *M C Mehta v Kamal Nath* (n 11).