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NEWS BULLETIN

January, 2019

Amendment to Bidding Guidelines for Solar Projects

MNRE Amends Bidding Guidelines for Solar Projects; Reduces Commissioning Timeframe

The Ministry of New and Renewable Energy has issued the Second Amendment to the competitive bidding guidelines for procurement of power from grid-connected solar photovoltaic (PV) projects. Through these amendments, the government is trying to expedite the entire process of solar project development, right from tendering and auctioning to commissioning.

The amendment will further accelerate the Government's plans to install 100GW of solar generation in India by reducing the required timeframe for project commissioning of a solar park situated inside (21 months) as well as outside (24 months) the solar park to 15 and 18 months respectively.

The ministry has also reduced the time required to attain financial closure for solar PV projects inside a solar park from 12 to 09 months. Whereas, the solar projects outside a solar park still have a 12-month timeframe.

A brief list of amendments is as follows:

- A minimum period of 22 days will be allowed between the issuance of request for selection (RfS) and the last date of bid submission.
- Under normal circumstances, the bidding process should be completed in a period of 110 days.
- For solar PV projects outside a solar park, the time-period for attaining the financial closure will be 12 months from the date of execution of the power purchase agreement (PPA).
- For solar PV projects inside a solar park, the time-period for attaining financial closure will be 09 months from the date of execution of PPA.
- The timeframe of commissioning of solar PV projects outside solar park will be 18 months from date of PPA execution
- The timeframe of commissioning of solar PV projects inside solar park will be 15 months from the date of PPA execution.

An extension for the financial closure can be considered by the procurer, on the request of the solar power generator after payment of a penalty as specified in the PPA. This extension will not have any impact on the scheduled commissioning date (SCD). Any penalty paid will be returned to the solar power generator without any interest on achievement of successful commissioning within the SCD.



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Amendment to Interstate Open Access Power Regulations **CERC notifies Fifth Amendment to Interstate Open Access Power Regulations**

The Central Electricity Regulatory Commission (CERC) has notified the Fifth Amendment to regulations for open access in interstate transmission on 02.02.2019, which were initially passed in 2008. These amendments were proposed in August 2018. While notifying the amendment, the commission stated that,

“Process followed for granting short-term open access may vary from state to state. Some of the states such as Gujarat, Telangana, have implemented their software for processing the short-term open access applications in accordance with their open access regulations. To avoid any conflict with the procedure followed by different states, it has been envisaged that National Open Access Registry (NOAR) will be designed in such a manner that it can be seamlessly interfaced with the state load dispatch centers (SLDCs)’ software for processing the short-term open access applications pertaining to interstate transmission system.”

The CERC also observed that the duration of three months for the standing clearance is the ceiling and an open access applicant can apply for short-term open access for a period less than three months and the concerned regional load dispatch centers can grant short-term open access for a period less than three months depending upon the availability of transmission capacity.

A maximum period of validity of three months has been prescribed by the CERC as it would reduce the time and effort on the part of both the short-term open access applicant, as well as the dispatch centers.

The commission has removed the ‘underutilization of transmission corridor’ as one of the criteria for revising the standing clearance. Now, the dispatch centers will comprehensively review the situation and do a prudence check while issuing the standing clearance to the applicant.

Andhra Pradesh Reveals New Wind-Solar Hybrid Policy **State targets 18 GW of renewable addition by FY 2021-22**

The Andhra Pradesh government has issued Wind-Solar Hybrid Power Policy-2018 to encourage energy generation from wind and solar hybrid projects in the state. The state government has set a target to achieve 18,000 MW of renewable energy capacity by the financial year 2021-22, which is 10 percent of the national target.

The policy will be applicable for a period of five years and will remain in force until a new policy is issued. Wind solar hybrid power projects that are commissioned during the operative period will be eligible for the incentives



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declared under this policy for a period of 10 years from the date of commissioning.

Key Policy Highlights

- A wind-solar hybrid project will be recognized as hybrid if the rated power capacity of one resource is at least 25 percent of the rated power capacity of other resource.
- Wind solar hybrid project must achieve a minimum capacity utilization factor (CUF) of 40 percent.

Hybrid power generated from the wind-solar hybrid project can be used for captive purpose; sale to third party through open access; sale to the distribution company (DISCOM) either at project specific tariff determined by the APERC or at tariff discovered through transparent bidding process; or sale to the DISCOM at average pooled power cost (APPC) under renewable energy certificate (REC) mechanism.

- The power procured from the hybrid project will be used for fulfillment of solar renewable purchase obligation (RPO) and non-solar RPO.
- For hybridization of existing wind or solar project, no additional connectivity capacity charges will be levied. Transmission charges will be applicable for the additional transmission access granted.
- Transmission augmentation required up to the receiving transmission substation will be the responsibility of the project developer.
- Banking of 100 percent of energy will be permitted during all 12 months of the year, based on the feasibility and prior approval of DISCOMs. Banking charges will be adjusted in kind at the rate of 5 percent of the energy delivered at the point of evacuation. The banking year will be from April to March.
- Unutilized banked energy will be considered as deemed purchase by DISCOMs at 75 percent of the APPC. Payment for the deemed purchase of unutilized banked energy will be capped to 10 percent of the total banked energy during the applicable year.
- Generation of electricity from wind-solar hybrid projects will be treated as eligible industry under the programs administered by the industries department, and incentives available to industrial units under such programs will be available to the solar power producers.



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CERC Relaxes grounds for Force Majeure & Uncontrollable Factor

A. Land Procurement Delay Caused by Government Treated as Force Majeure

The Central Electricity Regulatory Commission (CERC) has issued an order extending the scheduled commercial operating date for 72 MW of grid-connected solar photovoltaic projects. The commission was examining a petition filed by Welspun Energy Private Limited against the Solar Energy Corporation of India (SECI) wherein Welspun had sought extension of SCOD on account of uncontrollable factors.

Case Background

In 2016, SECI issued a LOI to Welspun Renewable Energy to develop 100 MW of grid-connected solar. The project was built on build own operate basis with viability gap funding (VGF) in Maharashtra under Phase-II Batch-III of the National Solar Mission.

Welspun Renewable Energy had requested SECI to allow Welspun Energy Private Limited to execute the PPA with SECI. On April 7, 2016, Welspun Energy Private Limited submitted a performance bank guarantee (PBG) of ₹300 million (~\$4.25 million) and soon applied for grid-connectivity with Maharashtra State Electricity Transmission Company Limited (MSETCL).

At that time, there was no provision in the request for selection (RfS) or the guidelines for PPA execution and implementation of the project by parent company of a bidder. After Welspun Energy Private Limited approached the commission, the Ministry of New and Renewable Energy (MNRE) referred the matter to the Empowered Committee.

The Empowered Committee recommended a change in the provisions of PPA signing by amending the guidelines. MNRE issued amendment to guidelines on July 19, 2016. The PPA was executed on July 26, 2016, between Welspun Energy Private Limited and SECI. The PPA was effective from April 10, 2016.

In September 2016, Welspun Energy communicated to SECI that it was not in a position to execute the project and requested for the release of its PBG. In November 2016, SECI asked the firm to comply with the terms of the PPA and to deposit extension charges for the delay period by November 14, 2016.

When the firm failed to respond, SECI wrote to the concerned bank for the encashment of PBG. The firm deposited ₹19 million (~0.27 million) with SECI and the encashment of PBG was kept on hold.



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Another notice was issued by SECI in March, 2017. Instead of complying with the mandatory condition, the firm requested for the assignment of the PPA to Giriraj Renewable Private Limited in terms of Article 15 of the PPA. The petitioner requested for extension of time and sent a cheque of ₹65 million (~\$0.92 million) which was returned by SECI. Then, SECI also informed the company that the “PPA has automatically stood terminated with the efflux of time”.

After examining submissions made by both SECI and Welspun, CERC opined that the financial closure and grid connectivity stand fulfilled within the extended period, and that the delay in land possession was caused due to government delay which can be treated as force majeure.

CERC condoned the delay by the company from October 4, 2016 to June 9, 2017, due to force majeure conditions.

CERC also stated that 28 MW of projects had already been installed, synchronized and commissioned. For commissioning of the remaining capacity of 72 MW, the commission extended the date up to 90 days from date of issue of its order.

The order was issued on December 17, 2018, which makes the new deadline to be March 17, 2019.

Delays in project commissioning for various reasons have been a nagging problem for the solar sector with scores of such petitions filed under state commissions. For instance, recently, Welspun Renewables Energy Private Limited had also filed a petition against Bangalore Electricity Supply Company Limited, Karnataka Renewable Energy Development Limited, and Karnataka Power Transmission Corporation Limited. The petitioner had asked the commission to declare that it is not liable to any liquidated damages to the BESCO as the commercial operational date was within 18 months and had requested the commission to accept the delay in commercial operational date as they were due to force majeure (unforeseeable) events.

Last month in a similar case, the Karnataka Electricity Regulatory Commission (KERC) penalized Marakka Solar Power Project LLP for delay in commissioning a 1 MW project.

KERC also dismissed a petition by Emmvee Photovoltaic Power Private Limited, stating that the solar power developer is not entitled to the relief due to project commissioning delay which resulted in a 30 percent tariff reduction for the developer.



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B. GST Introduction to be Treated as Change in Law for Transmission Service Providers: CERC

The Central Electricity Regulatory Commission (CERC) has issued an order stating that the introduction of Goods and Services Tax (GST) that came into effect from July 1, 2017 will constitute a Change in Law event for the transmission service providers in India.

The CERC had initiated suo moto proceedings in the matter of additional tax burden on transmission licensees on introduction of GST compensation cess. According to the commission, the proceedings were initiated to assess and determine the principles to be adopted for allowing Change in Law for projects where the cut-off date, which is seven days prior to the bidding deadline, occurs on or before June 30, 2017.

CERC had directed these transmission providers to submit the rate of tax on the cut-off date up to June 30, 2017 and then for the period after the introduction of GST from July 1, 2017. After considering the submissions made by these providers, the CERC asserted that due to varied nature of such taxes that have been abolished through the introduction of GST, it is not possible to ascertain the impact in a generic manner for all such providers. The abolition of these taxes, duties, cess, after the introduction of GST are Change in Law events and the savings arising out of such events should be passed to the beneficiaries.

The CERC also believed that the introduction of GST resulted in imposition of new or increased taxes, which constitute Change in Law event and accordingly the additional impact due to the introduction of GST will be borne by the beneficiaries. The details of the increase or decrease will be worked out by the providers and the beneficiaries.

The commission has ordered that the introduction of GST will constitute a Change in Law event if the cut-off date according to transmission service agreement falls on or after July 1, 2017. The difference between the taxes subsumed in GST and the rates of GST on various items will be admissible under the Change in Law and the transmission service providers will work out and provide the details of any change in the tax liability in respect to the introduction of GST to the beneficiaries supported by the auditor's certificate.



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The CERC has also stated that the additional expenditure on account of GST will be reimbursed by the long-term customers according to the relevant provisions of the agreement regarding Change in Law during the construction or operating period.

In October 2018, the CERC issued an order to compensate solar power developers by giving them an upfront lump-sum payment, which they would have incurred as an additional capital expenditure after the introduction of GST Law. It also asked the government agencies to make adjustments in the quoted tariff because of the additional operating and recurring expenditure that will incur for the entire term of the project.

Before this, the commission had issued an order stating that the enactment of GST laws is covered as Change in Law under Article 12 of PPAs. "The relief for Change in Law is allowed as a separate element on one-time basis in a time bound manner," the CERC said in its order.

CERC issues draft CERC (Terms and Conditions of Tariff) Regulations, 2019

The Central Electricity Regulatory Commission (CERC) has issued draft CERC (Terms and Conditions of Tariff) Regulations, 2019 for the tariff period from April 1, 2019 to March 31, 2024. These regulations will apply in all cases where tariff for a generating station or a unit thereof and a transmission system or an element thereof is required to be determined by the commission under section 62 of the Electricity Act, 2003. The regulations pertain to the computation of capital cost and additional capital expenditure, among others.

The CERC has proposed several changes in the draft regulations to align them with the current trends in the power sector. The fixed cost of generators has been proposed to be recovered on a quarterly basis, instead of annual, and a provision has been made for generators to recover the cost of coal if its gross calorific value at the receiving end does not match with the billed/dispatched one. The norms for working capital have also been tightened with receivables days reduced to 45 days from the earlier 60 days. CERC has also proposed the continuation of the 15.5 per cent regulated return on equity for generation and transmission companies, despite a reduction in the benchmark interest rates. These regulations will come into force on April 1, 2019, and unless reviewed earlier or extended by the commission, will remain in force for a period of five years.

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CERC has tightened the working capital norms by lowering the normative inventory and receivable period allowed by 10 days and 15 days, respectively.

The regulator added that power generators would write off equity in the plants that have completed useful life, which could be 25 years for thermal power, and recovered depreciation in excess of debt repayment till date.



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