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-LAW IN ACTION



Legal Updates

Ministry of New and Renewable Energy (“MNRE”) issued Guidelines for procurement of Wind- Solar Hybrid power through Tariff Based Competitive Bidding Process (“Guidelines”) on October 21, 2020, as a step toward ensuring availability of renewable energy to distribution companies at competitive rates. These Guidelines would be applicable for wind solar hybrid bids, till notification of unified Guidelines.

The brief of these Guidelines is as under:

- i. The objective of the Guidelines is to provide a framework for procurement of electricity from ISTS Grid Connected Wind-Solar Hybrid Power Projects through a transparent process of bidding.
- ii. Individual minimum size of project allowed is 50 MW at one site and a single bidder cannot bid for less than 50 MW. Further, the rated power capacity of one resource (wind or solar) shall be at least 33% of the total contracted capacity.
- iii. The arrangement for implementation shall be as under:
 - a. Solar Energy Corporation of India (“SECI”) will be the nodal agency for implementation of these Guidelines.
 - b. The selection of the Hybrid Power Projects will be through a transparent e-bidding process followed by e-reverse auction.
 - c. The solar and wind projects may be located at same or different locations.
 - d. Storage may be added to the Hybrid power project.
 - e. The power procured from the project may be used for fulfilment of solar RPO and non-solar RPO in the proportion of rated capacity of solar and wind power in the

MNRE issues Guidelines for Tariff Based Competitive Bidding Process for procurement of power from Grid Connected Wind Solar Hybrid Projects

- plant respectively.
- f. Unless explicitly specified in these Guidelines, the provisions of these Guidelines shall be binding on the Procurer and SECI.
 - g. The Intermediary Procurer, i.e. SECI, shall enter into a PPA with the Hybrid Power Generator(s) and also enter into a PSA with the distribution licensee(s)/ consumer(s). The PSA shall contain the relevant provisions of the PPA on a back to back basis. In case SECI is not able to enter into a PSA to sell power from projects awarded to distribution licensee(s) or bulk consumers within six months from issue of letter of award, those projects would be cancelled.
 - h. The duration of the PPA period should not be less than 25 years from the Scheduled Commissioning Date.
 - i. SECI may charge a trading margin of seven paise/kWh from the Buying entity/Procurer for purchase and sale of the hybrid power
 - j. The bidders may avail fiscal and financial incentives available for such projects as per prevailing conditions and Rules, and the same may be disclosed by the SECI in the Request for Selection document.

The Appellate Tribunal for Electricity (“**APTEL**”) reiterated and upheld settled law laid down by the Hon’ble Supreme Court in the Energy Watchdog Judgement dated April 11, 2017, when it observed that the Central Electricity Regulatory Commission (“**CERC**”) erred in denying Change in Law relief to Bhopal Dhule Transmission Company Limited, i.e. the Appellant, for Interest During Construction (“**IDC**”) and corresponding Carrying Costs on account of admitted Change in Law events after having arrived at unequivocal findings of fact and law that Change in Law events adversely affected the Appellant’s Project as provided in the Transmission Services Agreement (“**TSA**”).

The Hon’ble APTEL accordingly set aside the impugned order passed by CERC observing that, the said order is in contravention to the previous orders passed by the CERC in Petition Nos. 73/MP/2014 read with 310/MP/2015 and 174/MP/2016 wherein the same issue has been dealt by the CERC differently. The Hon’ble APTEL further observed that while determining the consequences of Change in Law, parties shall have due regard to the principle that the purpose of compensating the affected party by such Change in Law is to restore, through the monthly tariff payments, the affected party to the economic position if such Change in Law has not occurred.

Thus, the Hon’ble APTEL held that the Appellant was entitled for the Change in Law relief and since the Change in Law events approved by the CERC in the impugned order took place during the construction period of the Project i.e. before all the elements of the Project were declared under commercial operation. Hence, the Appellant was squarely covered by Article 12.2.1 of the TSA which provides for a formula in accordance with which the Non-Escalable Transmission Charges of the Appellant is to be increased.

The Maharashtra Electricity Regulatory Commission (“**MERC**”), while taking cognizance of the partial grid failure in the Mumbai Metropolitan Region that occurred on October 12, 2020 (“**Grid Failure**”), initiated a *suo motu* proceeding under Regulation 32 of the MERC (Conduct of Business) Regulations, 2004 read with Regulation 46.2.4 of MERC (State Grid Code) Regulations, 2020. The proceeding was necessitated to find out the primary reasons for the partial grid failure, response and performance of licensees / generators and for identifying preventive measures.

Pursuant to order passed by MERC in the proceeding, it constituted a High Level Committee (“**Committee**”) to conduct a detailed enquiry of the Grid Failure comprising of the following members: (i) Dr. Sudhir Kumar Goel, IAS (Retd.), Ex. Additional Chief Secretary,

APTEL upholds Hon’ble Supreme Court’s view regarding Change in Law in the Energy Watchdog Judgement

MERC constitutes High Level Committee to enquire into failure of Mumbai Metropolitan Region Grid

Government of Maharashtra (Chairman of the Committee); (ii) Shri V. Ramakrishna, Ex. Member (Power Systems), CEA (Member of the Committee); and (iii) Dr. Faruk A.S. Kazi, HOD (Elect. Engg. Dept.), VJTI , Mumbai (Member of the Committee), vide notification dated 22.10.2020,.

The broad terms of reference for the Committee comprise of: (i) root cause analysis of Grid Failure; (ii) analysis for system restoration efforts (for individual licensees and generating companies); and (iii) to provide suggestions for remedial measures so that such occurrences can be avoided in future. The timeframe for submission of the diagnostic and curative detailed report on the Grid Failure is three months (extendable at the request of the Committee at the sole discretion of the MERC). The interim report of the Committee is expected in a period of one month.

A-142, Neeti Bagh
New Delhi – 110 049, India
T: +91 11 4579 2925 F: +91 11 4659 2925
E: mail@neetiniyaman.com
W: www.neetiniyaman.com

Office No. 51, 4th Floor, Nawab Building,
327, Dr. D.N. Road,
Opp. Thomas Cook, Flora Fountain
Mumbai – 400 023, India
T: +91 22 4973 9114

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