



LAW & POLICY UPDATE

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Guidelines for Tariff Based Competitive Bidding Process for Procurement Power from Grid Connected Wind Power Projects

- Wind power deployment in India started in the early 90s. With conducive policy environment provided at Central and State level, the country today occupies 4th position globally in terms of wind power installed capacity, which stands at over 43 GW as on May 31, 2023. While this is a remarkable achievement, the installed capacity is a small percentage of the India's estimated wind power potential, which, as per the National Institute of Wind Energy (NIWE), stands at a staggering 1,164 GW at 150 meter above ground level, most of it located in 8 states (Andhra Pradesh, Gujarat, Karnataka, Madhya Pradesh, Maharashtra, Rajasthan, Tamil Nadu, and Telangana).
- On July 26, 2023, in succession of the previously issued 2017 Guidelines, the Ministry of Power (MoP) introduced the Guidelines for Tariff Based Competitive Bidding Process for Procurement Power from Grid Connected Wind Power Projects (**Guidelines/2023 Guidelines**) under Section 63 of the Electricity Act, 2003 with the following objectives:
 - Facilitating renewable capacity addition and fulfilment of Renewable Purchase Obligation (RPO) requirement of distribution licenses.
 - Providing a transparent, fair, standardized procurement framework based on open competitive bidding with appropriate risk-sharing between various stakeholders to enable procurement of power at competitive prices in consumer interest, improve bankability of projects and ensure reasonable returns to the investors.
 - Providing a framework for the inter-State or intra-State, long-term, sale-purchase of power as a further measure to de-risk the sector.
- The Guidelines, yet to be notified, are applicable for procurement of electricity by the procurers from grid-connected Wind Power Projects (WPP) having a bid capacity of 10 MW and above for projects connected to intra-State transmission system; and bid capacity of 50 MW and above for projects connected to inter-State transmission system. Upon notification, the erstwhile 2017 Guidelines and amendment thereto, shall not be applicable for bids issued subsequent to issuance of these Guidelines. However, the projects already awarded, under implementation, or commissioned under the erstwhile 2017 Guidelines will continue to be governed by the 2017 Guidelines. In case there are any ongoing bids wherein the last date of bid submission is after the date of notification of the 2023 Guidelines, then the bid documents in respect of such bids shall be appropriately modified to align them with the terms of the 2023 Guidelines.
- Vide the 2023 Guidelines, MoP has grand-fathered existing commercial concepts into legally binding contractual terms. Some of these are enumerated below:
 - **Take or pay | Clause 6.5 of the 2023 Guidelines:** The Guidelines specify that in case the procurer does not off-take power scheduled by the generator, the penalty shall specifically be in accordance with the *Electricity (Promotion of Generation of Electricity from Must-Run Power Plant) Rules, 2021*, as amended from time to time.

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- **Mechanism for excess generation | Clause 6.2.1 (b) of the 2023 Guidelines:** In case of availability of excess power than the CUF specified, the generator shall have all the rights to sell it to any other entity subject to first right of refusal vesting with the procurers. Such a refusal is required to be given by the procurer within a period of 15 days, otherwise it would be considered as deemed refusal.
- **Payment security mechanism | Clause 6.3 of the 2023 Guidelines:** The 2023 Guidelines refer to the *Electricity (Late Payment Surcharge and Related Matters) Rules, 2022* including amendments and clarification, if any, thereof, issued from time to time.
- **Penalty for DSM | Clause 6.2.3 of the 2023 Guidelines:** In case of any deviations from the schedule, Deviation Settlement Mechanism (DSM) shall be applicable as per the prevailing regulations, and DSM charges at the generator's end shall be settled by the wind power generator (WPG).
- **Mechanism for shortfall in supply | Clause 6.2.1 (a) of the 2023 Guidelines:** In case the project generates and supplies energy less than the energy corresponding to the minimum CUF, the WPG will be liable to pay the penalty to the procurer for the shortfall in availability below such contracted CUF level. The amount of such penalty will be calculated at 50 % of the PPA tariff for the shortfall in energy terms, in accordance with the terms of the PPA.
- **Repowering | Clause 6.1 of the 2023 Guidelines:** The generator will be at liberty to upgrade or repower their plants during the PPA period at its own risk and cost.
- **Change in law | Clause 6.7 of the 2023 Guidelines:** Provisions for change in law shall be in accordance with the *Electricity (Timely Recovery of Costs due to Change in Law) Rules, 2021* notified by MoP, including amendments thereof issued from time to time.
- **Performance Bank Guarantee (PBG) | Clause 12.2 of the 2023 Guidelines:** PBG shall be the lower of 5% of the Estimated Capital Cost for WPP for the financial year in which the bids are invited, or the upper limit stipulated by Ministry of Finance from time to time.
- **Commencement of supply of power | Clause 6.7 of the 2023 Guidelines:** The Generator shall be liable to commence supply of power within a period of 24 months from the date of execution of the PPA for project size not more than or equal to 1,000 MW, and 30 months from the date of execution of the PPA for project size more than 1,000 MW.
- **Deviations from the 2023 Guidelines | Clause 18 of the 2023 Guidelines:** Any deviation from the process defined in the Guidelines shall be subject to approval by the Appropriate Commission before the initiation of the bidding process itself.
- **Tariff adoption:** Distribution Licensee or Intermediary Procurer is responsible for approaching the Appropriate Commission for adoption of tariff under Section 63 of the Act. If such Appropriate Commission does not decide within 60 days of submission or within 120 days from the date of the Power Sale Agreement (PSA), whichever is more, scheduled commencement of supply date shall be extended accordingly.
- The 2023 introduce a reference to already notified Rules by MoP, to avoid any ambiguity with respect to its application, in addition to introducing certain new terminologies such as the definition of 'affiliate' (a person who controls, is controlled by, or is under the common control with such Company) and 'control' (ownership of **more than 50% of the voting shares of such Company** or right to appoint majority Directors).
- In addition to the above, the Guidelines mandate that the bid-out tariff shall be the tariff at the delivery point, and all the cost and consequence up to the delivery point shall rest with the WPG, which may include transmission charges or losses, DSM etc. Consequently, all costs beyond the delivery point shall be borne by the procurer.
- The MoP has also provided guidelines for transmission connectivity, role of State Nodal Agency, dispute resolution, ISTS charges and losses, etc., for smooth generation and supply of power by the generator and procurement of the same by the procurer.
- The endeavour through the 2023 Guidelines is to provide a binding legal document which has the force of law and is adopted by State agencies as well, even for Intra-State bidding. The MoP has reinforced its directive that any deviation to the basic tenets to the 2023 Guidelines shall not be allowed without a prior approval of the Appropriate Commission.

