

EIR QUARTERLY LEGAL UPDATES

A quarterly round up on legal updates in the Energy, Infrastructure and Resources sectors

VOLUME 1 - EDITION 1

With increased focus on infrastructure and in light of India's commitment towards promoting clean and green energy, the last few months have been bustling with various legal and regulatory updates in the energy, infrastructure and resources (EIR) space. The consistent effort of the Government of India towards boosting the EIR ecosystem is a promising indication for both public and private stakeholders to track developments and seize any opportunities to enter the industry.

In this Volume 1 - Edition 1 of the EIR Quarterly Legal Updates, we have covered key legal and regulatory updates impacting EIR related sectors in India for the period July 2023 to September 2023.

Snapshot

- *Environment (Utilisation of Crop residue by Thermal Power Plants) Rules 2023 issued by the Ministry of Environment Forest and Climate Change*
- *Guidelines for Tariff Based Competitive Bidding Process for Procurement of Power from Grid Connected Solar PV Power Projects, Wind Power Projects and Wind Solar Hybrid Projects issued by the Ministry of Power*
- *Central Electricity Regulatory Commission (Indian Electricity Grid Code) Regulations 2023 issued by the Central Electricity Regulatory Commission to regulate the grid and related aspects*
- *Amendment to the Offshore Area Mineral (Development and Regulation) Act 2002*
- *Amendment to the Mines and Minerals (Development and Regulation) Act of 1957*
- *Notification of Green Hydrogen standard by MNRE*
- *National Framework for Promoting Energy Storage Systems*
- *Amendments to the procedure for approval and facilitating import / export (cross border) of electricity by the Designated Authority*
- *Electricity (Amendment) Rules 2023 notified by the Ministry of Power*
- *Scheme for Viability Gap Funding (VGF) for development of Battery Energy Storage Systems (BESS)*

Key legal and regulatory updates

Environment (Utilisation of Crop residue by Thermal Power Plants) Rules 2023 issued by the Ministry of Environment, Forest and Climate Change

With a view to reduce carbon intensive nature of coal based thermal power plants (TPPs) and to control stubble burning in the National Capital Region of Delhi (NCR) and adjoining areas, the Ministry of Power (MoP) had introduced policies on 8 October 2021 for use of biomass pellets in co-firing along with coal in TPPs. The aforesaid policies underwent changes with respect to the prescribed minimum usage of biomass pellets by TPPs due to supply chain constraints.

Subsequently, on 11 July 2023, the Ministry of Environment Forest and Climate Change issued the Environment (Utilisation of Crop residue by Thermal Power Plants) Rules 2023 (Crop Residue Rules) under the Environment Protection Act 1986, which is applicable to NCR and the adjoining areas comprising the States of Haryana, Punjab, Rajasthan and Uttar Pradesh (Adjoining Areas) where any source of pollution is located causing adverse impact on air quality in the NCR.

The key features of the Crop Residue Rules are as follows:

- All TPPs to mandatorily use minimum 5% blend of crop residue pellets / brisques along with coal towards power generation;
- The Central Electricity Regulatory Commission (CERC) or State Electricity Regulatory Commission, as applicable, will determine the tariff for power generated from TPPs after considering the utilization of crop residue for such power generation;
- The Commission for Air Quality Management in NCR and Adjoining Areas or any other authorised officer (Authority) may levy environmental compensation for the year 2024-25 for non-compliance by TPPs on an annual basis, which will be calculated per unit of electricity generated by such TPPs; and
- The Authority may, upon consultation with the Central Electricity Authority (CEA) and Central Pollution Control Board, grant relaxation to the TPPs for any difficulty in complying with the stipulated requirements due to circumstances beyond the control of such TPPs.

Guidelines for Tariff Based Competitive Bidding Process for Procurement of Power from Grid Connected Solar PV Power Projects, Grid Connected Wind Power Projects and Grid Connected Wind Solar Hybrid Projects

The MoP issued guidelines for tariff based competitive bidding process on 28 July 2023, 26 July 2023 and 21 August 2023 for procurement of power from solar photovoltaic power projects (Solar Projects), grid connected wind power projects (Wind Projects), and wind solar hybrid projects (Hybrid Projects) respectively.

Below is a summary of the key changes introduced in the aforesaid MoP guidelines:

SOLAR PROJECTS	WIND PROJECTS	HYBRID PROJECTS
APPLICABILITY CRITERIA		
Long term procurement of solar	Power procurement from grid-connected wind	Long-term procurement of electricity through

“Crop Residue Rules prescribe mandatory use of crop residue in thermal power generation, penalties in case of non-compliance and relaxations / exemptions”

"The guidelines for solar, wind and wind-solar hybrid power projects will be applicable on tenders issued from the date of notification of such guidelines."

SOLAR PROJECTS	WIND PROJECTS	HYBRID PROJECTS
power from solar photovoltaic power projects / solar power generating systems 'with or without an energy storage system'.	power projects having a bid capacity of: (a) 10 MW and above for projects connected to intra-state transmission system; and (b) 50 MW and above for projects connected to inter-state transmission system. Under the erstwhile guidelines, the applicability thresholds were fixed at power projects having: (a) individual size of 5 MW and above at one site with minimum bid capacity of 25 MW for intra-state projects; and (b) individual size of 50 MW and above at one site with minimum bid capacity of 50 MW for inter-state projects.	competitive bidding process, by procurers from hybrid power projects having a bid capacity of: (a) 10 MW and above for projects connected to intra-state transmission system; and (b) 50 MW and above for projects connected to inter-state transmission system, provided that the rated power capacity of one resource (wind or solar) shall be at least 33% of the total contracted capacity. The solar and wind projects of the hybrid project may be located at the same or different locations. Under the erstwhile guidelines, the permitted individual minimum size of project was 50 MW at one site with minimum bid capacity of 50 MW.

POWER PURCHASE AGREEMENT (PPA) TERM

The PPA term will generally be 20 years from the scheduled commissioning of supply date or from the rescheduled date of commencement of supply, with a maximum extension of 5 years i.e., the maximum period of the PPA term will be 25 years; whereas the erstwhile guidelines provided that the PPA term would be 25 years from the scheduled commissioning date.

DELAY IN COMMENCEMENT OF POWER SUPPLY

Delay in commencement of power supply beyond the scheduled date entitles the procurer to, in addition to appropriation of bank guarantee, reduction in contracted capacity and termination of the PPA, debar the generator from participating in bids for 1 year in case of first default and for 2 to 3 years for second and subsequent defaults.

Under the erstwhile guidelines, delay in commencement of supply of power beyond the scheduled commencement period involved penalties as detailed in the PPA, but not debarment.

POWER PROCUREMENT

Shortfall in the minimum capacity utilization factor (CUF) will attract penalty of 1.5 times the PPA tariff for shortfall of energy.

Shortfall in the minimum CUF will attract penalty at 50% of the PPA tariff for shortfall in energy terms in accordance with the terms of the PPA.

Shortfall in the minimum CUF - same as guidelines for Solar Projects.

However, under the erstwhile guidelines, in case the project supplies energy less than the energy

SOLAR PROJECTS	WIND PROJECTS	HYBRID PROJECTS
<p>The erstwhile guidelines provided for penalty for shortfall subject to a minimum of 25% of the cost of this shortfall in energy terms calculated at the PPA tariff.</p> <p>Upon availability of excess power, the generator may sell power to any other entity, provided that the procurer has the first right of refusal.</p> <p>The erstwhile guidelines also allow the power generator to sell power to another entity provided the first right of refusal vested with the procurer and in case the procurer purchases excess power generated, the same would be at 75% of the PPA tariff.</p>	<p>Sale of power above maximum CUF – same as the guidelines for Solar Projects.</p>	<p>corresponding to the minimum CUF, the generator would be liable to pay to the procurer, compensation for the shortfall in availability of energy which is calculated at 50% of the PPA tariff for the shortfall in energy terms, in accordance with the terms of the PPA. Such compensation as recovered from the generator shall be passed on by the intermediary procurer to the end procurer.</p>

The aforesaid bidding guidelines will be applicable on tenders issued from the date the guidelines are notified in the official gazette. The aforesaid guidelines supersede the respective erstwhile guidelines.

However, projects already awarded / under implementation / commissioned under the respective erstwhile guidelines will continue to be governed by those guidelines and will not be covered under the new corresponding bidding guidelines. In case of ongoing bids wherein the last date of bid submission is after the date of notification of the new bidding guidelines, the tender documents in respect of such bids will be appropriately modified to align it to the new respective bidding guidelines.

CERC (Indian Electricity Grid Code) Regulations 2023 issued by the Central Electricity Regulatory Commission

On 29 May 2023, the Central Electricity Regulatory Commission (CERC) issued the Central Electricity Regulatory Commission (Indian Electricity Grid Code) Regulations 2023 (Grid Code 2023) and notified the same in the official gazette on 11 July 2023, with a view to ensure stability and reliability in grid operation and maximize economy and efficiency of power systems, detailing, *inter alia*, (i) roles, functions and responsibilities of the concerned statutory bodies, generating companies, licensees, and any other person connected with the operation of the power systems; (ii) reliability and adequacy of resources; (iii) technical and design criteria for connectivity to the grid, including integration of new elements, trial operation and declaration of commercial operation of generating stations and inter-state

transmission systems; (iv) operational requirements and technical capabilities for secure and reliable grid operation including load generation balance, outage planning and system operation; (v) unit commitment, scheduling and despatch criteria for physical delivery of electricity; and (vi) integration of renewables.

The Grid Code 2023 came into force on 1 October 2023, as mentioned in CERC's notification dated 3 August 2023.

Some notable features of the Grid Code 2023 are as follows:

"The Grid Code 2023 does away with 'must-run' status to all renewable energy power plants, including wind and solar power projects"

- provision for integrated resource planning, including demand forecasting, generation resource adequacy planning, and transmission resource planning;
- grant of connectivity to the Inter-State Transmission System (ISTS) by the Central Transmission Utility (CTU) to be governed under the Central Electricity Regulatory Commission (Connectivity and General Network Access to the inter-State Transmission System) Regulations 2022;
- while the Grid Code 2023 is aligned with the Central Electricity Regulatory Commission (Indian Electricity Grid Code) Regulations, 2010 (Grid Code 2010), to the extent that any country inter-connected with the National Grid or Regional Grid will be treated as a separate control area, it does not include any provisions for international connection to the ISTS;
- omission of the 'must-run' status in relation to all renewable energy power plants (including wind and solar power), except for biomass power plants, and non-fossil fuel-based cogeneration plants whose tariff is determined by the CERC under the Grid Code 2010;
- laying down a procedure specifying data, forecasting and scheduling for renewable energy generating stations (REGS) at an inter-state level;
- introduction of several new chapters including:
 - (i) 'Protection Code', detailing protection protocols, settings and protection audit plan for electrical systems;
 - (ii) 'Cyber Security', addressing cyber security concerns, has been introduced, which requires, *inter alia*, all users, National Load Despatch Centres, Regional Load Despatch Centres, State Load Dispatch Centres, CTU, State Transmission Utilities and state nodal agencies develop a cyber security framework in accordance with the Information Technology Act 2000 and respective CEA regulations and guidelines;
 - (iii) 'Commissioning and Commercial Operation Code', covering aspects regarding drawl of startup power from and injection of infirm power into the grid, trial runs and requirements for declaration of commercial operation date (COD); and
 - (iv) 'Monitoring and Compliance Code', for monitoring of compliance by various entities in the grid and the manner of reporting the instances of violations of the Grid Code 2023 along with remedial steps.

Amendment to the Offshore Areas Mineral (Development and Regulation) Act 2002

The Ministry of Law and Justice notified the Offshore Areas Mineral (Development and Regulation) Amendment Act 2023 (Offshore Amendment) on 11 August 2023 thereby amending the Offshore Areas Mineral (Development and Regulation) Act 2002 (OAM Act) which regulates the development of mineral resources situated in the territorial waters, continental shelves, exclusive economic zones and other maritime zones of India. The Offshore Amendment became effective from 17 August 2023 and has been enacted with the aim to: (i) optimise the commercialisation of

the vast offshore mineral resources of the country; and (ii) extend the existing auction regime for grant of mineral concessions for onshore minerals to such minerals located in the maritime zones of India.

The key features of the Offshore Amendment are as follows:

- *Introduction of composite licence:* The OAM Act earlier recognised only 3 types of mineral concessions: (i) reconnaissance permit; (ii) exploration licence; and (iii) a production lease for undertaking mining. The Offshore Amendment has introduced composite licences for exploration-cum-production of minerals wherein exploration is to be completed within 3 years, extendable by another 2 years. Upon establishment of existence of mineral resources over the explored area, the licensee will be granted one or more production leases for over such area.
- *Auction Process:* Under the Offshore Amendment, production lease and composite licenses are granted through a competitive bidding process, including by way of e-auction, as opposed to grant by way of administrative action under the OAM Act. Applications for grant of production leases submitted prior to commencement of the Offshore Amendment will be deemed void. Similarly, exploration licences granted prior to the commencement of the Offshore Amendment are now ineligible for production leases over such explored area.
- *Term of mineral concessions:* Earlier, the term of a production lease was limited to a maximum period of 30 years, with an option for renewal for another 20 years. The Offshore Amendment has extended the term of the production leases to a fixed term of 50 years, however there will be no renewal of such leases.
- *Commencement of operations:* The lease holder is required to commence production and dispatch within 4 years from the date of execution of the lease, extendable by 1 year subject to approval of administering authority, failure of which may result in lapse of the production lease.
- *Transfer of mineral concessions:* Composite licenses or production leases are transferable to such transferees who are eligible to hold such leases or licenses.
- *Reservation of area:* The OAM Act allows the Government of India to reserve offshore areas not already held under any operating right, for government companies. Under the Offshore Amendment, joint ventures of government companies will also be eligible for mineral concessions over such reserved areas, subject to certain conditions. Such joint ventures of government companies may include: (i) a joint venture partner selected through a competitive process; or (ii) companies where the government owns at least 74% of the paid-up share capital.
- *Mining of atomic minerals:* In case of atomic minerals, exploration, production, and composite licenses will be granted only to the government or government companies. The definition of atomic minerals is as per the Mines and Minerals (Development and Regulation) Act 1957 (MMDR Act) and includes rare earth minerals containing uranium or thorium; pitchblende and uranium ores; and uriferous allanite, monazite, and other thorium minerals.
- *Establishment of Offshore Areas Mineral Trust:* The Offshore Areas Mineral Trust has been established to maintain a non-lapsable fund under the public account of India to ensure availability of funds for exploration, mitigation of adverse impact of offshore mining, disaster relief, research, work for interest and benefit of the persons affected by such exploration or production operations.

The introduction of auction process to the offshore minerals will usher transformative changes in the sector as the transparent process will curb arbitrariness, reduce frivolous litigations and increase revenue generation for the exchequer. Further, it may also attract participation from private players leading to better optimisation and utilisation of India's maritime resources through introduction of necessary expertise and technology in the sector.

"Amendment to the OAM Act introduces auction process for grant of offshore mineral concessions and a fixed term of 50 years for such concessions - opening doors for private player participation. Offshore Areas Mineral Trust to be established for research, exploration, mitigation of adverse impacts and benefit of affected persons and communities."

Amendment to the Mines and Minerals (Development and Regulation) Act of 1957

The Ministry of Mines, through notification dated 17 August 2023, had notified the effective date for the Mines and Minerals (Development and Regulation) Amendment Act 2023 (Amendment). The Amendment was introduced to the principal act i.e., MMDR Act with a view to expand mineral exploration of rare earth minerals for fuelling the growth of electric vehicles and contribute towards India's transition to achieve net-zero carbon emission by 2070.

The key features of the Amendment are as follows:

- *Part D of Schedule I to the MMDR Act:* Minerals such as lithium, beryllium, titanium, niobium, tantalum and zirconium are shifted from Part B (Atomic Minerals) of the Schedule I to the MMDR Act to a new list – Part D, stipulating critical and strategic minerals.
- *Exploration License:* An exploration license has been introduced for minerals mentioned in Schedule VII of the Amendment. Such license would be granted through an auction process for the purpose of undertaking reconnaissance operations or prospecting operations for minerals including, *inter alia*, gold, silver, diamond, lithium, cobalt, potash, zinc. Upon receipt of the geological report from the exploration licensee, the Central / State Government will conduct an auction process in accordance with the MMDR Act and thereby select the preferred bidder for grant of the mining lease. Upon a mining lease being executed pursuant to the exploration operations being undertaken by the aforesaid licensee, such exploration licensee will also have the right to a share in the auction value of the mining lease payable by the lease holder to the State Government. However, the right over such share by the exploration licensee is only in respect of minerals listed under Schedule VII of the MMDR Act. Per the Amendment, the manner of conducting auction process for the grant of exploration license, terms and conditions of bidding for selection and share payable to the exploration licensee, will be set out by the Central Government in a separate set of rules.
- *Tenure of Exploration License:* The abovementioned exploration license is to be given for a tenure of 5 years with an extension of not more than 2 years. However, such extension may only be granted by the State Government upon being satisfied that the licensee may not be able to complete the exploration process within 5 years.
- *Reconnaissance Operations:* Reconnaissance operations will now include activities such as pitting, trenching, drilling and sub-surface excavation.

Introduction of the exploration license along with the Central Government's power to auction critical minerals opens doors for private player participation which was erstwhile held with government entities. Exploration of deep seated and critical minerals in turn provides momentum in achieving India's carbon emission goals by promoting clean energy through its usage in various sectors such as technology, electric batteries and electronics.

The Amendment also aligns the MMDR Act to enable exploration licensees to conduct reconnaissance and prospective operations by widening the definition of reconnaissance operations to include drilling and sub-surface exploration activities. Further, the Central Government is also given the power to auction minerals as listed under Part D of Schedule I of the MMDR Act in accordance with the provisions of Minerals (Other than Atomic and Hydro-Carbons Energy Minerals) Concession Rules 2016.

"Amendment to the MMDR Act introduces new aspects such as exploration license and reclassification of atomic minerals into deep seated and critical minerals – opening doors for private player participation in mining critical minerals to clean energy sector."

Notification of Green Hydrogen standard by MNRE

India launched the 'National Green Hydrogen Mission' on 4 January 2023 (Mission). The objective of the Mission is to make India a global hub for production, usage and export of 'Green Hydrogen' and its derivatives. The Mission could be a pivotal move towards realizing Indian government's goal to become energy independent by 2047 and achieve net zero carbon emission by 2070.

On 18 August 2023, in a significant move providing momentum to the Mission, the Ministry of New and Renewable Energy (MNRE) notified the standard for green hydrogen in India outlining the emission thresholds that are required to be met for hydrogen produced in India to be classified as 'green', i.e., from renewable sources. Green hydrogen means hydrogen produced using renewable energy including production through electrolysis and conversion of biomass (subject to certain green house gas emission thresholds). This is a crucial step in eliminating any ambiguity regarding the criteria for classifying green hydrogen and places India amongst the pioneers leading the green hydrogen space.

Further, the Bureau of Energy Efficiency under the MoP has been notified as the nodal authority for accreditation of agencies for the monitoring, verification and certification for Green Hydrogen production projects in India. A detailed methodology outlining the measurement, reporting, monitoring, on-site verification, and certification of green hydrogen and its derivatives in India will be issued by MNRE in due course.

National Framework for Promoting Energy Storage Systems

The MoP unveiled the National Framework for Promoting Energy Storage Systems (Framework) in August 2023. The main objective of the Framework is to ensure continuous access to renewable energy, cut emissions, and enhance grid stability while promoting innovation and self-reliance. That said, the framework highlights the present legal status surrounding energy storage systems (ESS) in India which *inter alia* includes:

- Recognition of ESS as a part of the power system in accordance with Electricity (Amendment) Rules 2022;
- ESS derived renewable energy qualify for compliance with renewable purchase obligation;
- Specific guidelines have been developed for procurement and utilization of BESS and development of pumped storage projects by MoP. Further, guidelines for tariff-based competitive bidding for round-the-clock power highlight the crucial role of ESS in balancing renewable energy for round the clock supply of power and drives demand for ESS establishment through ensuring grid stability; and
- The Electricity (Promotion of Generation of Electricity from Must-Run Power Plant) Rules 2021 ensure renewable energy sources through must-run power plants are not curtailed for commercial considerations which thereby underscores the importance of ESS in maintaining a reliable supply of renewable energy.

Key takeaways from the Framework are listed as below:

- Viability Gap Funding (VGF) up to 40% of the capital cost of the project, with the condition that the projects must be commissioned within 18 to 24 months may be offered to initial few battery energy storage systems (BESS) projects;
- Use of sovereign green bonds towards establishing an ESS accelerated ecosystem;
- Promulgation of guidelines on resource adequacy plan by the Central Government in consultation with the CEA followed by State Electricity

"MNRE eliminates ambiguity regarding the criteria for classification 'green hydrogen' by notifying the definition thereof and providing specific standards after stakeholder consultation."

"National Framework for Promoting Energy Storage Systems is a step in the right direction to promote ESS ecosystem in India through favourable financing measures and streamlining regulatory requirements."

Regulatory Commissions setting out regulations based on the aforesaid guidelines;

- Connectivity of ESS to the nearest ISTS may be granted on priority basis;
- Development of technology agnostic bidding guidelines for long duration energy storage, short duration energy storage and ancillary services to assist utilities, procurers, and developers in developing sustainable ESS projects - bidding may be on the basis of either composite tariff (including the cost of input power) in case input power is arranged by the developer or tariff for storage on a per megawatt hour (Mwh) basis if the input power is to be arranged by the procurer of the storage capacity.
- New renewable energy projects (excluding hydro power projects) may be mandated to install ESS (of minimum 1 hour storage) for minimum 5% of the renewable energy capacity – such ESS maybe installed with the renewable energy project or be located elsewhere;
- From a regulatory standpoint – (a) use of ESS maybe linked with carbon credits along with detailed methodology for accounting; (b) regulations maybe notified for use of ESS in the form of electric vehicle batteries, roof top solar with battery storage etc.; (c) BESS used in solar roof tops maybe aggregated at grid scale which may be used by both Discoms and users/ owners for which a peer to peer trading framework maybe established;
- Electricity duty and cross subsidy charges may only be levied on the ESS upon final consumption of electricity;
- Land to be acquired by the ESS maybe exempt from payment of stamp duties and registration charges, government land maybe provided at concessional rates to the developers on annual lease rent basis;
- Approved list of models and manufacturers may be issued for BESS which will be similar to the list issued for solar photovoltaic models by MNRE. Models and manufacturers included in the list would qualify for use in government projects, projects under government schemes and projects set-up for sale of electricity to public utilities within India; and
- Producers and manufactures of ESS will be obligated to comply with extended producer responsibilities under the Battery Waste Management Rules 2022. Mechanism for repurposing ESS components such that it may be used in other applications may be set out.

The Framework is a step in the right direction to promote ESS ecosystem in India through favourable financing measures and streamlining regulatory requirements. However, while the Government of India has put forth the VGF scheme (as detailed below), implementation of the other abovementioned measures is yet to be seen.

Amendments to the procedure for approval and facilitating import/export (cross border) of electricity by the Designated Authority

The MoP, on 18 December 2018, after consultation with various stakeholders, had issued the revised 'Guidelines for Import / Export (Cross Border) of Electricity - 2018' (2018 Guidelines) in supersession of the 'Guidelines on Cross Border Trade of Electricity - 2016'. The 2018 Guidelines were issued with the following objectives:

- To facilitate import / export of electricity between India and its neighbouring countries;
- To evolve a dynamic and robust electricity infrastructure for import / export of electricity;
- To promote transparency, consistency and predictability in regulatory mechanism pertaining to import / export of electricity in the country; and
- To provide reliable grid operation and transmission of electricity for import / export.

"CEA amends the procedure for approval of import / export of cross border electricity to expressly allow for real-time market for India's neighbouring countries."

Thereafter, the MoP appointed the Member (Power System), CEA as the Designated Authority under Clause 4.2 of the 2018 Guidelines in December 2018. Subsequently, the CERC issued the (Cross Border Trade of Electricity) Regulations in March 2019 to enable and facilitate cross border trade of electricity between India and its neighbouring countries. In February 2021, the Designated Authority issued the 'Procedure for Approval and Facilitating Import / Export (Cross Border) Of Electricity' (Procedure for Approval 2021). The Procedure for Approval 2021 was issued with the objective to facilitating approval and other matters related to import / export (cross border) of electricity between India and neighbouring countries. Recently, the CEA issued the first amendment to the Procedure for Approval 2021 in August 2023 (1st Amendment). The key features of the 1st Amendment are as follows:

- **Deletion of Clause 6.5 (ii):** Prior to deletion, the provision stated that while Indian entities trading the power of domestic origin in the Day-Ahead Market (DAM) did not require any approval from the Designated Authority, any trade made pertaining to other than DAM required approval of the Designated Authority; and
- **Modification to Clause 6.5 (iv):** Amendment to specifically allow participation of entities of neighbouring countries in the Real-Time Market (RTM) segment of the Indian Power Exchange, in addition to the existing DAM for trading of electricity. Earlier, the option of giving access to the RTM was kept open, but no provision for it had been guaranteed.

Electricity (Amendment) Rules 2023 notified by Ministry of Power

The Ministry of Power issued notifications dated 30 June 2023 (First Amendment) and 1 September 2023 (Third Amendment) amending the Electricity Rules 2005, a comparison of which is set out below:

RELEVANT RULE	FIRST AMENDMENT	THIRD AMENDMENT
Rule 3(a)(i)	In the event a captive generating plant is set up by an affiliate company of the captive user, the captive user is required to hold 51% in the affiliate company.	The proviso requiring a captive user to hold 51% in the affiliate company that sets up a captive generating plant has been omitted.
	Further, a captive user is required to hold a minimum of 26% ownership in the captive generating plant.	It has been clarified that ownership of 26% may be held by captive 'user(s)' instead of captive 'user'.
Rule 3(2) Explanation (b)	A subsidiary of an existing captive user is admissible as captive consumption by a captive user.	In addition to a subsidiary, now a holding company as defined under Section 2(46) of the Companies Act 2013 of an existing captive user, can also be considered as a captive user itself.

"Holding company of an existing captive user can be considered as a captive user itself."

Considering the foregoing, the Third Amendment has been notified in order to clear ambiguities around applicability to holding companies with respect to captive consumption by a captive user as set out under the First Amendment.

Scheme for Viability Gap Funding (VGF) for development of Battery Energy Storage Systems (BESS)

“Government will provide financial support of up to 40% of the capital cost for development of Battery Energy Storage Systems in the form of VGF.”

The Government of India on 6 September 2023 approved the Scheme for VGF for development of BESS (Scheme). The Scheme envisages development of 4,000 MWh of BESS projects by the year 2030-31. To this end, the Government of India will provide substantial financial support of up to 40% of the capital cost in the form of VGF, which will be disbursed in five tranches linked with the various stages of implementation of BESS projects.

The VGF grant scheme aims at lowering Levelized Cost of Storage (LCoS) to manageable levels. With an initial outlay of INR 9,400 crore, including a budgetary support of INR 3,760 crore, the Scheme aims at achieving LCoS in the range of INR 5.50-6.60 per kWh.

Further, the BESS developers eligible for VGF grants will be selected through a transparent competitive bidding process, thereby promoting a level playing field for players in both public and private sectors.

In addition to VGF, the Scheme also aims to ensure that the benefits of the scheme reach the consumers. Accordingly, a minimum of 85% of the BESS project capacity will be made available to distribution companies (DISCOMs).

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