

EIR QUARTERLY LEGAL UPDATES

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

VOLUME II

The Government's consistent efforts to boost the energy, infrastructure and resources (EIR) ecosystem continue as the last few months have seen various integral legal and regulatory updates in this area.

With increased focus on infrastructure and in light of India's commitment towards promoting clean and green energy, the Government's push to bolster the energy and infrastructure framework of the country is a promising indication for both public and private stakeholders to track developments and seize any opportunities to enter the industry.

In this Volume II of the EIR Quarterly Legal Updates, we have covered key legal and regulatory updates impacting EIR related sectors in India, particularly in electricity laws, waste management and renewable energy, for the period from October 2023 to December 2023.

Snapshot

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Key legal and regulatory updates

CERC order on removing difficulties in relation to certain provisions of Central Electricity Regulatory Commission (Connectivity and General Network Access to the inter-State Transmission System) Regulations, 2022

"CERC's recent order paves way for payment of transmission charges for T-GNA connections. It also addresses refund of land bank guarantees in the event connectivity bank guarantees are not submitted and the application is thereby closed."

Central Electricity Regulatory Commission (CERC) notified the CERC (Connectivity and General Network Access to the inter-State Transmission System) Regulations, 2022 (GNA Regulations) for providing non-discriminatory access to the central transmission network for all power producers. Under the GNA Regulations, a distribution licensee or a bulk consumer with a load of 50 MW and above is permitted to seek connectivity to the inter-state transmission system (ISTS) through an application for general network access (GNA).

Further to the aforesaid background CERC issued an order dated 1 October 2023 (Order). The Order addresses some of the difficulties and clarifications raised by the Central Transmission Utility of India (CTIUL) and Grid-India regarding the implementation of GNA Regulations. The Order clarifies important points such as treatment of land bank guarantees and payment of transmission charges for T-GNA.

Clarity was sought on treatment of land bank guarantees furnished by applicants that are renewable energy generating stations (other than hydro generating stations) or energy storage systems (excluding pumped storage plant) – in the event of closure of connectivity application due to non-submission of applicable connectivity bank guarantees. The Order clarified that in case the application of an entity is closed due non-submission of connectivity bank guarantees (Conn BG1, BG2 or BG3), the land bank guarantee of INR 10,00,000 / MW submitted in lieu of land documents will be returned within 1 month from the closing of the application.

There are two categories of applications for T-GNA, depending on the lead time and urgency of the requirement, that is, advance application and exigency application. Advance applications can be made for T-GNA up to one month, while exigency applications can be made for T-GNA up to 1 day. As per Regulation 34.4 of the GNA Regulations, the transmission charges for T-GNA under advance application category have to be deposited within three working days of the grant of T-GNA, or before the start date of T-GNA if it is within the next 3 working days. The transmission charges for T-GNA under exigency application category have to be deposited along with the application.

In light of the above, a request was sought regarding payment of transmission charges for T-GNA within 3 days from the date of approval of the T-GNA (due to technical issues) instead of payment of such transmission charges in advance in relation to the T-GNA starting in the next 3 working days – as given in the GNA Regulations. The Order allowed the said request on owing to a transition period between the old regulations and the new GNA Regulations and instructed Grid India to iron out the technical/ software issues within 2 months from 1 October 2023 – post which transmission charges are to be paid in accordance with GNA Regulations. Transmission charges are the charges that an entity must pay to CTUIL for using ISTS for a specified period and quantum of power.

Further, CERC is also vested with the power to pass any *suo moto* orders and thus remove difficulties and implement the GNA Regulations.

Amendments to the Central Electricity Regulatory Commission (Sharing of Inter-State Transmission Charges and Losses) Regulations, 2020

"CERC amends the Central Electricity Regulatory Commission (Sharing of Inter-State Transmission Charges and Losses) Regulations, 2020 to align the same with GNA Regulations and further clarify the process of sharing of charges."

The CERC has issued 3 amendments to the Central Electricity Regulatory Commission (Sharing of Inter-State Transmission Charges and Losses) Regulations, 2020 (Sharing of Charges Regulations) through notifications dated 7 February 2023 (First Amendment) with effect from 1 October 2023, 20 October 2023 (Second Amendment) and 26 October 2023 (Third Amendment).

The First Amendment was published on 7 February 2023 and brought into effect from 1 October 2023 through CERC's notification dated 3 August 2023. Some key changes include linkage of the definition of 'Associated Transmission System' to the GNA Regulations; defining 'Drawee DIC' as the Designated ISTS Customers (DICs) which draw power through ISTS, excluding energy storage systems; sharing of transmission charges between Drawee DICs and generating stations where bills are raised on the Drawee DICs and the *inter se* settlement of the transmission charges to be as per the terms of the power purchase agreement (PPA) or mutual agreement between the concerned parties; and late payment surcharge shall be payable by the concerned DICs as per the Electricity (Late Payment Surcharge and Related Matters) Rules, 2022.

The Second Amendment came into effect on 1 November 2023 and brought in some key changes such as including a comprehensive definition of 'deemed COD' which means the commercial operation date of the transmission system or a part thereof as: (i) approved by the relevant electricity commission under regulated tariff mechanism; or (ii) declared by the transmission licensee under tariff based competitive bidding; the phrase 'is delayed' has been replaced by 'has not achieved' in the context where a generation station has not achieved COD but the associated transmission system has done so; a revised mechanism for treatment of yearly transmission charges (YTC) for inter-state transmission systems or parts thereof has been prescribed under the amendment - this also includes the delay liquidated damages where one inter-state transmission licensee causes a delay in another licensee's system which has achieved COD.

The Third Amendment shall be brought into effect through a gazette notification and will bring in key changes including that 30% of the YTC of such transmission systems will be considered in the national component where an inter-regional HVDC transmission system is required to transmit power in the reverse direction due to system requirements, and also a formula for determining the national and regional component of YTC has been introduced.

Gujarat Renewable Energy Policy 2023 issued by the Energy and Petrochemicals Department, Government of Gujarat

"Gujarat notifies new consolidated renewable policy i.e. Gujarat Renewable Energy Policy 2023 in supersession of the erstwhile separate renewable policies such as Gujarat Wind Power Policy 2016, Gujarat Wind Solar Hybrid Policy 2018 and Gujarat Solar Power Policy 2021."

On 4 October 2023, the Government of Gujarat issued the consolidated Gujarat Renewable Energy Policy 2023 (Gujarat RE Policy 2023), which will be effective till the earlier of 30 September 2028 or till the notification of a new policy, for governing all renewable projects in the state of Gujarat in supersession of individual erstwhile policies namely, Gujarat Wind Power Policy 2016, Gujarat Wind Solar Hybrid Policy 2018 and Gujarat Solar Power Policy 2021. The Gujarat RE Policy 2023 aims to augment the overall renewable energy capacity in the state, generate 36 GW of solar and 143 GW of wind energy, attract investments of INR 5,00,000 crores, and utilize 4,00,000 acres of land.

The benefits and incentives under the Gujarat RE Policy 2023 will be available for a period of 25 years from the date of commissioning or the lifespan of the renewable energy (RE) project, whichever is earlier. While Gujarat Urja Vikas Nigam Limited

(GUVNL) is the implementing, facilitating, coordinating and monitoring agency, Gujarat Energy Development Agency (GEDA) is the nodal agency. GEDA has been tasked with project registration, validation, issuing commissioning certificates and tracking monthly progress.

Gujarat RE Policy 2023 is applicable to all RE projects including ground mounted solar, roof top solar, floating solar, canal top solar, wind, rooftop wind and wind-solar hybrid projects. However, it is not applicable to projects set up for the purpose of supplying power to units producing green hydrogen/ green ammonia. Further, it allows any person to set up an RE project for captive consumption, supply of power under open access mode and supply of power to the distribution licensee.

Some notable features of the Gujarat RE Policy 2023 are:

- Rooftop solar or small-scale wind plants can be set up under a net metering arrangement or gross metering arrangement.
- For wind-solar hybrid plants wheeling of energy for captive use or for third party is allowed on payment of charges. These plants are divided into two categories:
 - (i) *Type A Projects*: include conversion of existing or under-construction standalone solar or wind power plants into hybrid projects. The combined solar and wind power injection into the grid after hybridisation should be lesser than the capacity allowed by Gujarat Energy Transmission Corporation/ State Transmission Utility (GETCO / STU).
 - (ii) *Type B Projects*: include new wind-solar hybrid generation projects which are not registered with GEDA or for which GETCO / STU has not granted evacuation permission until the date of issuance of this policy. RE developers are mandated to lay a dedicated line for the evacuation of power from the pooling / sending-end sub-station of the project to the receiving-end sub-station of GETCO / STU.

For both Type A and Type B projects, wheeling for captive use or third-party sale is permitted upon payment of charges.

- For RE parks, the Gujarat RE Policy 2023 prescribes that the minimum capacity should be 50 MW and the maximum capacity will be according to the guidelines and schemes issued by the MNRE from time to time.
- Renewable Energy Certificate mechanism can be used to set up RE projects for captive use / third party sale in accordance with CERC regulations. However, wheeling of power from such projects will attract levy of charges.
- Energy accounting and banking for all RE projects is permitted as per the regulations framed by GERC and Green Energy Open Access Rules, 2022 issued by MoP. The energy settlement will be on a billing cycle basis and banking charges will be payable for consumers availing banking facility. However, residential consumers are not required to pay banking charges on solar power consumption.
- The consumer or generator will be liable to pay transmission and distribution charges or losses for wheeling of power as determined by GERC.
- Wind, solar and wind-solar hybrid power can be procured by DISCOMs either through a competitive bidding process or at a prefixed levelized tariff.

- RE projects are eligible for carbon credits and they can be retained by developers of projects installed under competitive bidding route. However, projects where GERC has determined tariff, carbon credits will be shared as per the GERC's tariff order. Further, rooftop solar / wind projects implemented under the central / state government schemes will have to pass on the benefit of the carbon credits to the DISCOM.
- The eligibility criteria for setting up captive RE projects has been clarified and has been linked to the Electricity Rules, 2005 i.e. the ownership requirement is 26% of equity shareholding with voting rights.
- There is no capacity restriction for setting up RE projects for captive use / third party sale with respect to the consumer / captive user's contract demand / sanctioned load with DISCOMs.
- The Gujarat RE Policy 2023 aims to facilitate wind turbine manufactures and RE developers to install prototype wind turbines, given the benefits of technological advancements in wind turbines (higher hub height, higher capacity, etc.). Components or items procured or imported for manufacturing such prototype wind turbines are eligible for customs and excise duty exemptions.

The Gujarat RE Policy 2023 has attempted to address, resolve and clarify various critical issues present in the erstwhile policies such as eligibility criteria for setting up RE projects under captive route, limitation on the installed capacity of RE projects to sanctioned load / contract demand, extension of the Gujarat Wind Solar Hybrid Power Policy 2018 etc. However, certain incentives such as concessions in payment of grid charges, exemption from electricity duty, compensation for lapsed excess energy etc., which were provided under the erstwhile policies, are no longer being provided.

Rajasthan Renewable Energy Policy 2023 issued by Energy Department, Government of Rajasthan

On 6 October 2023, the Government of Rajasthan issued the Rajasthan Renewable Energy Policy 2023 (Rajasthan RE Policy 2023) governing all RE projects in the state of Rajasthan. The Rajasthan RE Policy 2023 has been issued in supersession of separate erstwhile policies, namely, Rajasthan Solar Energy Policy 2019 and Rajasthan Wind and Hybrid Energy Policy 2019 (collectively, Previous Policies). The Rajasthan RE Policy 2023 is a significant stride towards sustainable energy practices and provides comprehensive legal updates to stimulate the growth of renewable energy in Rajasthan, aligning with broader sustainability goals and emerging energy needs. It aims to achieve 65GW of solar capacity and 15GW of wind-solar hybrid capacity by the year 2030.

Some notable features of the Rajasthan RE Policy 2023 are:

- It sets a target of 90,000 MW of renewable capacity by 2029-30 which includes: (i) 65,000 MW solar plants; (ii) 15,000 MW wind and hybrid plants; and (iii) 10,000 MW hydro plants. This has marked a substantial increase from the earlier clean energy target of 30,000 MW solar power projects and 3,500 MW hybrid power projects.
- It encourages creation of renewable energy parks through public-private partnerships, with the government investing up to 50% equity. The registration charges are set at INR 10,000 / MW plus GST, capped at INR 20,00,000 plus GST for each solar park.

"Rajasthan notifies new consolidated renewable policy i.e. Rajasthan Renewable Energy Policy 2023 in supersession of the erstwhile separate renewable policies such as Rajasthan Solar Energy Policy 2019 and Rajasthan Wind and Hybrid Energy Policy 2019."

- Hybrid projects have been classified into type A and type B, the conversion of existing or under-construction wind or solar plants into hybrid projects has been allowed. Rajasthan RE Policy 2023 recognizes a wind-solar power plant as hybrid if the rated power capacity of one resource is at least 25% of the rated power capacity of the other resource, deviating from the national standard of 30%.
- Government land will be allotted to solar / RE park and solar / wind / hybrid / hydro power projects including storage plants as per the provisions of Rajasthan Land Revenue (Allotment of Land for Setting Up of Power Plant based on Renewable Energy Sources) Rules, 2007.
- The Rajasthan Vidyut Prasaran Nigam Limited will prepare a plan for renewable evacuation infrastructure development, including provisions for grid connectivity and infrastructure development.
- As per the Rajasthan RE Policy 2023, in-principal clearance or approval will be granted by the state level sanction committee based on the project scenario, in comparison to in-principle clearance and final approval by the State Level Screening Committee and the State Level Empowered Committee under the Previous Policies.
- The charges under the Rajasthan RE Policy 2023 amount to INR 50,000 per hectare per year for projects commissioned on or after its commencement. The developers have the option to pay renewable energy development and facilitation charges or supply 7% of power generated to Rajasthan DISCOMs free of cost by installing additional capacity. In contrast, the Previous Policies had development charges ranging from INR 2,00,000 to 5,00,000 per MW per year depending on the commissioning date.
- It aims to develop 10 GW capacity from hydro, pumped storage, and battery energy storage systems, encouraging RE power projects with storage systems for captive use/ third-party sale.
- It aims development of EV charging infrastructure in accordance guidelines and standards issued by Ministry of Power and Central Electricity Authority. EV charging stations may be established by state / Central public sector undertakings, private operators, or under public-private partnership models.
- The state will promote the setup of decentralized solar power projects with a minimum capacity of 0.5 MW and a maximum capacity of 5 MW in the premises and vicinity of 33 kV grid sub-stations for sale of power to DISCOMs.

Office Memorandum issued by Ministry of Finance regarding participation of demerged entities in public procurement

"Demerged entities may use credentials of parent entity to participate in bid processes."

The Ministry of Finance (MoF) on 12 October 2023 issued an office memorandum allowing demerged entities to use the credentials of the original / parent entity to satisfy the eligibility criteria in tenders for the first 5 years from the incorporation of the demerged entities. Procuring entities may consider such parent entity credentials based on factors including, *inter alia*, the nature of demerger, type of procurement and number of eligible bidders.

That said, the tendering authority may exercise its discretion in specifically mentioning whether credentials of a demerged entity will be considered or not and may also specify certain terms and conditions under which demerged entities may be considered eligible to participate.

Amendment to the Central Motor Vehicles Rules, 1989 to promote hydrogen-based vehicles

"MoRTH amends the Central Motor Vehicles Rules, 1989 to promote hydrogen-based vehicles."

The Ministry of Road Transport and Highways (MoRTH) on 16 October 2023 issued the Central Motor Vehicles (Eighth Amendment) Rules, 2023 with the objective of promoting hydrogen-based vehicles in India. This amendment ensures that hydrogen powered vehicles comply with safety and procedural standards and promotes the development of clean energy solutions, through introduction of a new rule 125M, wherein safety and procedural requirements for type approval of internal combustion engine vehicles in the M and N categories (i.e., for four-wheeled vehicles for carrying goods/ persons) powered by liquid or compressed gaseous hydrogen, provided hydrogen fuel specifications for internal combustion engine vehicles are in accordance with IS 16061: 2021.

The aforesaid requirements will be as per the Automotive Industry Standards (AIS 195:2023) until corresponding BIS specifications are notified under the Bureau of Indian Standards Act, 1986.

Maharashtra Green Hydrogen Policy notified pursuant to National Green Hydrogen Mission

The Maharashtra Green Hydrogen Policy (Policy) was notified by the Maharashtra State Department of Industry, Energy and Labour on 17 October 2023 to promote the production and use of green hydrogen in the state, with a production target of 500 kilo tons per annum green energy by 2030. Key features of the Policy include:

- **Tenure:** Effective up to 31 March 2030 or until the announcement of a new green hydrogen policy by the State.
- **Registration:** Projects producing green hydrogen and its derivatives and renewable energy projects in Maharashtra related to the aforesaid production will be registered with Mahaurja's office.
- **Incentives and Subsidies:** The Policy provides various incentives and subsidies to projects that procure 100% renewable energy to produce green hydrogen (including production of hydrogen from municipal solid waste and biomass) or procure renewable energy from third parties including through open access routes, power exchanges, integration of renewable energy sources and storage systems, licensed power transmission companies. The Policy provides for the following incentives:
 - 50% exemption from intrastate transmission charges (ISTC) and wheeling charges for a period of 10 years from the date of commissioning of green hydrogen projects and similarly 60% exemption will be provided for hybrids of hydrogen and its derivatives. Further, up to 3 projects with total capacity of 100 kilotons per annum a 50% waiver on transmission and wheeling charges is provided for a period of 20 years.
 - 100% exemption from electricity duty, cross subsidy surcharge and additional surcharge for a period of 10 years for standalone renewable energy plants and 15 years for hybrid renewable energy plants.
 - 100% waiver on land tax, excise duty and stamp duty on land acquisition for projects completed during the implementation period of the Policy.

Benefits under the Policy will not be applicable to the projects approved prior to the implementation of the Policy and to projects implemented upon its expiry.

"With a view to promote green hydrogen mission, Maharashtra's green hydrogen policy aims to incentivize its production by providing exemptions in duties and surcharges."

That said, the benefits would be limited till the time the projects produce 500 kilotons of hydrogen or 5 GW of operational electrolyser capacity, whichever is attained first. An associate, beneficiary group of owners or special purpose vehicle, joint venture in relation to a parent company will be eligible for concessions to the extent 100 kilo tons of hydrogen is produced per year or 1 GW of operational electrolyser capacity – whichever is lesser.

The Policy will ensure maintenance of energy security and deployment of renewable energy sources and technologies towards realising the objectives under the National Hydrogen Mission.

MoP notifies revised Renewable Purchase Obligations

Pursuant to the erstwhile order dated 22 July 2022 issued on renewable purchase obligations (RPO), the Ministry of Power (MoP) notified the revised RPO on 20 October 2023, which comes into force on 1 April 2024. The notification sets out the minimum share of consumption of renewable energy sources along with different shares of consumption for different types of sources for designated consumers such as distribution licensees, open access consumers or captive for the period 2024-2030, and aims to promote the use of clean energy sources for electricity and specifies compliance and penalty mechanisms for the designated consumers to meet the set renewable energy targets.

"Revised RPO targets can be met through a composite mix of many renewable energy sources including trading of RECs."

Key features of the notification are as follows:

- **Scope:**
 - Wind and hydro energy (including energy generated from pump storage projects, small hydro projects, hydro power projects situated outside India as approved by Central Government and free power being provided to State/DISCOMs from hydro power projects) components will be met by power generated from such projects commissioned after 31 March 2024.
 - Distributed renewable energy (DRE) components will only be met from energy generated from renewable energy projects less than 10 MW. This includes solar installations under all configurations, such as rooftop, ground-mounted, floating, etc.
 - Other renewable energy: This component can be met by energy produced from renewable energy projects other than specified above. However, it includes energy from all projects, including free power commissioned before 1 April 2024.
- **Renewable energy targets:** The notification provides that the total energy consumption must be obtained from different types of renewable energy sources such as wind, hydro, distributed renewable sources and others as captured below. For instance, the total renewable energy share for:
 - wind energy increases on a yearly basis from 0.67% in 2024-25 to 3.48% in 2029-30;
 - hydro power ranges from 0.38% in 2024-25 to 1.33% in 2029-30;
 - distributed renewable energy sources which ranges from 1.50% in 2024-25 to 4.50% 2029-30; and

- other renewable energy sources ranges from 27.35% 2024-25 to 34.02% in 2029-2030.

While the targets are divided depending upon the source of renewable energy, shortfall in wind and hydro energy can be adjusted by considering the power consumption under the other or adjusted against any excess energy consumption under other renewable sources. That said, an exception is made for open access consumers or consumers with captive power plants to fulfil their renewable energy consumption regardless of the source. Further, meeting renewable energy consumption targets may also be done through trading of renewable energy certificates.

- *Penalty:* Any shortfall in meeting the specified renewable energy consumption targets will be treated as non-compliance and a penalty of INR 10,000 per MWh will be imposed as per the Energy Conservation Act, 2001.

The revised RPO notification is a step in the right direction towards reducing the dependence on fossil fuels and implementing India's climate commitments towards net zero carbon footprint. However, the notification does not cover procurement of energy from sources with energy storage systems as compared to the erstwhile order notified by MoP.

Procedure for implementation of Uniform Renewable Energy Tariff issued by the Ministry of Power

Pursuant to the Electricity (Amendment) Rules 2022 (Amendment Rules), which *inter-alia* provide for implementation of uniform renewable energy tariff (URET), the MoP on 25 October 2023 issued the procedure for implementation of URET through Grid India, as the implementing agency (IA) for standardizing the tariff across various categories of central pool such as solar, wind etc. at which the intermediary procurer (IP) will sell power generated from renewable sources from such central pool to all the end procurers.

Some notable features of URET implementation procedure include:

- Categorisation of central pools for the following renewable energy sources, including: (a) solar; (b) wind; (c) hydro; (d) solar-wind hybrid; (e) round-the-clock power (solar-wind hybrid and storage); (f) peaking power (solar-wind hybrid and storage); (g) firm and dispatchable renewable energy power; and (h) any other new pool as specified by the Central Government.
- Notification by the Central Government on the start date for each category of central pool for a duration of 5 years. All the capacity for which power supply agreements (PSAs) are signed within this period will be part of the central pool (provided other eligibility conditions are fulfilled), which will remain part of the pool till expiry of the respective PSAs. No new capacity will be added upon the lapse of the 5-year period from the start date of the pool.
- Applicability of URET only on power procured by the end-procurer, which will not have any impact on the renewable energy tariff discovered under the respective tariff based competitive bidding process and payable to renewable energy generators by the IP as per the power purchase agreement (PPA).
- Eligibility criteria for applicability of URET on generators/ producers, end procurers and IP.

"In line with the amended Electricity Rules, MoP provides the procedure for implementation of Uniform Renewable Energy Tariff for standardizing tariff across various categories of central pool."

- Contractual obligations between generators and IPs, and IPs and end-procurers to be governed by the respective bidding documents including PPAs and PSAs and will have no bearing on URET.
- Role of the IA (i.e. Grid India) which includes:
 - (a) computing monthly URET based on information submitted by the IPs.
 - (b) issuing monthly account statements for adjustment of any surplus/ deficit tariff among the IPs, based on information submitted by the IPs.
 - (c) publishing relevant details including the monthly accounts statements on its website.
- Calculation of URET based on scheduled energy to end procurer from the pool by the IPs and actual amount payable for such supply of power.

Illegal Imposition of Charges by State Governments on generation of Electricity

The MoP issued a circular on 25 October 2023 (Circular), pursuant to an earlier circular dated 25 April 2023, to all state governments as a reminder that imposition of additional charges in the form of development fee, tax, duty, or cess on generation of electricity from any source (thermal, hydro, wind, solar, nuclear, etc.) was illegal and unconstitutional. The Circular recognizes that while imposition of additional charges by state governments on consumption and sale of electricity is constitutional, such charges cannot be imposed by a particular state government on generation of electricity since the electricity may be generated in one state and consumed in another, and also since any tax / duty which the state government is not specifically allowed to levy as per the constitution cannot be imposed by the state government. Additionally, no taxes can be imposed on consumption or sale of electricity consumed by the Central Government or sold to the Central Government for consumption by the Government agencies.

"States cannot levy additional charges in the form of development fees/ fund/ tax/ cess on generation of electricity."

The imposition of additional charges by some States on generation of electricity from various sources directly affects the viability and profitability of power projects, especially those based on renewable energy sources. Such charges may also increase the cost of electricity for consumers and hamper the development of the electricity sector.

Amendment to the Battery Waste Management Rules, 2022

The Ministry of Environment, Forest, and Climate Change (MoEFCC) on 25 October 2023 notified the Battery Waste Management (Amendment) Rules, 2023 (Battery Waste Rules). The Battery Waste Rules have introduced amendments in relation to responsible handling of waste batteries.

Some notable features of the Battery Waste Rules are:

- The definition of a 'battery' has been expanded to include new or refurbished cells and accumulators, any source of electrical energy derived from direct conversion of chemical energy and includes both disposable primary and secondary batteries.
- Battery producers will be required to recycle or refurbish the batteries brought to the market, along with those utilized by themselves, and will also be required to handle pre-consumer waste batteries originating from the manufacturing, assembly, or import processes.

"MOEFCC amends the notifies Battery Waste Management Rules, 2022 imposing new duties and responsibilities on battery producers, refurbishers and recyclers with the aim of realising sustainable and accountable battery management."

- The Central Pollution Control Board (CPCB) will regulate the Extended Producer Responsibility (EPR) through an online portal, and producers will be required obtain registration through this platform. Further, the producers will be required to submit a report on the batteries manufactured, assembled, or imported in the previous fiscal year to CPCB by the 30th of June every year.
- Manufacturers are now required to fulfill their targets for collection, recycling, and refurbishment of various types and sizes of batteries.
- Recyclers and refurbishers are required to submit quarterly reports on the CPCB portal with details of the total weight of the waste batteries processed by them. The regulations specify that EPR certificates will not be generated for the recycling or refurbishment of imported waste batteries, highlighting the significance of efficient management of domestic waste.
- The provision on issuance of certificates for waste batteries has been amended to include the following:
 - if one or more trading platforms exist for the sale / purchase of EPR certificates, these certificates can be established through an accredited agency, aligning with the guidelines issued by the CPCB and approved by the Central Government;
 - the operation and regulation of the electronic platform facilitating the trade of EPR certificates among obligated entities will adhere to guidelines notified by the Central Government based on the recommendations of CPCB; and
 - CPCB will determine the highest and lowest prices for EPR certificates every 6 months or as needed, taking into consideration the costs associated with the collection and the environmentally sound management of waste batteries.

The Battery Waste Rules mark a significant stride toward sustainable and accountable battery management by imposing notable responsibilities on battery producers, recyclers, and refurbishers, and highlighting the significance of EPR and environmentally friendly approaches.

Amendment to the Plastic Waste Management Rules 2016

The MoEFCC through notification dated 30 October 2023 amended the Plastic Waste Management Rules, 2016 (Plastic Waste Rules). Some of the key amendments are set out below:

- Amendment to the definition of 'carry bags' to include bags made from biodegradable plastic, in addition to those made from plastic material or compostable plastic, and that of 'producer' to include persons engaged in manufacture of plastic packaging.
- Introduction of a centralized online portal for making applications for one-time registrations under the Plastic Waste Rules. The erstwhile provision regarding registration being initially granted for 1 year and subsequently for 3 years has been omitted.
- The State Pollution Control Board or Pollution Control Committee will not grant registration to plastic waste recycling or processing units unless such unit possesses a valid consent under the Water (Prevention and Control of Pollution) Act, 1974 and the Air (Prevention and Control of Pollution) Act, 1981 as well as a registration certificate from the District Industries Centre or any other Government agency authorised in this regard.

"MoEFCC amends Plastic Waste Management Rules by introducing, inter alia, one-time online registration, ensuring valid consents under Air Act and Water Act are obtained, purchase of EPR certificates, etc."

- Entities required to register for extended producer responsibility (EPR) on the centralised online portal (viz. producers, importers, brand owners and plastic waste processors engaged in recycling, waste to energy, waste to oil, and industrial composting) cannot deal with any unregistered entity having an obligation to register.
- A new provision re purchase of EPR certificates has been inserted wherein the CPCB may allow purchase of EPR certificates of category which has a surplus in fulfilment of EPR obligations, for fulfilment of a category with deficit in EPR obligations. The CPCB will prescribe the quantum of EPR certificates to be procured to bridge the gap where deficit exists based on availability and cost of collection, segregation and processing for different categories of plastic packaging waste. However, the aforesaid provision is only applicable till the end of 2025-2026.

Bihar Electric Vehicle Policy 2023 issued by the Government of Bihar

The Government of Bihar on 5 December 2023 notified the Bihar Electric Vehicle Policy 2023 (EV Policy) with the objective of *inter alia* making Bihar a model state for electric vehicle (EV) transport ecosystem and developing an accessible and robust network of EV charging infrastructure in the state. The goal of the EV Policy is to ensure that 15% of the new vehicles purchased and registered in Bihar by 2028 are EVs.

The EV Policy will remain effective for a period of 5 years from the date of its publication in the official gazette (i.e. 5 December 2023). The fiscal incentives provided under the EV Policy are in addition to those available under the Central Government's Faster Adoption and Manufacturing of Hybrid and Electric Vehicles (FAME II) scheme. Under the EV Policy, the incentives for setting up a charging station will be applicable to the charging stations established as per existing guidelines and MoP standards and benefits for EVs will be applicable to those in compliance with the technology definition of each category of EV under the FAME India Scheme. However, no beneficiary may claim more than one similar incentive under any other scheme run by the State Government.

Some key features of the EV Policy are:

- Several incentives and rebates have been included in the EV Policy for electric two-wheelers, electric three-wheelers (passenger and goods carriage vehicles), electric four-wheelers, light electric motor vehicle (goods carriage) and heavy electric motor vehicle (bus and goods carriage).
- Owners of EVs are eligible for scrapping incentives for old vehicles as per the notification issued by MoRTH from time to time.
- Providing accessible EV charging stations in Bihar being the prime objective of the EV Policy, the Government of Bihar endeavours to establish a network of public and private charging stations across the state. A category-wise incentive mechanism has been set out in line with MoP guidelines for various categories of chargers. Incentives for all types of charging stations will be applicable for 3 years.
- The EV Policy provides for a 30% subsidy which may be provided on power tariff for public and semi-public charging stations for the first 3 years.
- Municipal authorities to provide subsidized parking for personal EVs and cities to prepare a city parking plan for on-street parking places for EVs with subsidized fees and EV charging stations.

"Bihar Government notifies Bihar EV Policy 2023 to ensure that 15% of the new vehicles purchased and registered in Bihar by 2028 are EVs."

- A 3-tier arrangement for directives, monitoring and implementation of the EV Policy has been laid out with State EV Steering Committee at apex level, Transport Department EV Monitoring Committee (with the Transport Department as the nodal department for implementation of the EV Policy) and a District-Level EV committee under the Chairmanship of the District Magistrate.
- A re-use and recycling ecosystem for end-of-life batteries is encouraged under the EV Policy and a well-defined Policy for encouraging re-use of batteries will be notified by the Industries Department, Government of Bihar in consultation with the Environment, Forest and Climate Change Department of Bihar Government and Bihar State Pollution Control Board.

Policy on Repowering of Wind Power Projects

The Ministry of New and Renewable Energy (MNRE) issued a circular dated 7 December 2023 setting out the policy for repowering of wind power projects (in suppression of the 'Policy for Repowering the Wind Power Projects' dated 5 August 2016) (Policy), which came into effect on 7 December 2023. The Policy aims to allow older-generation turbines to be replaced or repowered with more efficient turbines from the latest generation and refurbishing wind turbines to extend their lifespan beyond their original design subject to safety and performance assessments. Key features of the Policy are enumerated below:

- Developers are required to undertake repowering or refurbishment of old wind turbines as follows:
 - Wind turbines which fail to comply with quality control order of the MNRE;
 - Wind turbines that have completed their life design under respective type certificate in accordance with applicable standards;
 - Wind turbines of rated capacity below 2 MW; and
 - Commercial / voluntary consideration after 15 years of installation.
- *Implementation:*
 - *Standalone projects:* The state / central nodal agencies can identify potential turbines for repowering and eliciting interest or project owners may directly submit a detailed project report for such repowering. Based on the report – the nodal agencies will coordinate with the respective state / central transmission utilities for augmentation of transmission capacity. Further upon scrutiny of the project – in principle consent of the DISCOMs along with consent letter of the nodal agencies will be provided to the project owner.
 - *Aggregation projects:* Such projects will be identified by nodal agencies and a state / central public sector enterprise or private developer based on technical and financial criteria will be declared as the wind powering project aggregator (WPPA). The WPPA will be responsible for acquiring/ leasing additional land, obtaining state and central clearances for development of the project, acquiring all assets at the site including wind turbine and compensate the owners for future loss of revenue for the balance life of the project.

Under both abovementioned projects – the developer is required to issue a notice to the state / central utilities 2 years in advance for enhancing

The revised policy on repowering of wind power projects is a step in the right direction towards optimizing wind energy turbines to its potential thereby increasing its capacity and generating more renewable energy."

transmission capacity in accordance with the proposed repowered capacity of the wind power project.

- **PPA:**
 - Until the expiration of the PPA, the power produced at the metering point prior to repowering, calculated as an average of the previous 3 years' generation, would be obtained following the terms of the agreement.
 - Except for delays brought on by force majeure, the PPA's term will be extended for repowering for a maximum of 2 years.
 - However, following the repowering, the DISCOM will not be obligated to acquire or have any control over the extra power produced. The developer / owner may, at its option, sell the extra power generated as per applicable laws and there will be no compulsion on supply of power to any DISCOM / procurer at fixed rates.
 - On the advice of the Wind Repowering Committee, a project that is undertaking repowering will be excused from providing power to the DISCOM for the duration of the repowering, up to a maximum of 2 years from the date of consent issued by state / central nodal agencies (except for delays brought on by force majeure events). The Policy also permits a portion of early commissioning.
 - Before the repowering work begins, the DISCOMs / owners of PPAs will be notified at least 1 year prior – so that other power sources may be arranged.
 - With the mutual consent of both parties, the previous PPA may be terminated.
 - *Commissioning Period:* The repowered / refurbished projects shall be commissioned within a period of 24 months from the date of consent letter from the nodal agencies – part and early commissioning is permitted.

Amendments to the Central Electricity Regulatory Commission (Terms and Conditions of Tariff) Regulations, 2019

"The Central Electricity Regulatory Commission (Terms and Conditions of Tariff) Regulations 2019 have been amended to include declaration of deemed availability in case of shut down of a transmission line due to NHAI, Railways or BRO project(s)."

The CERC on 15 December 2023 issued the third amendment (Amendment) to the Central Electricity Regulatory Commission (Terms and Conditions of Tariff) Regulations, 2019 (2019 Tariff Regulations), which is valid for the tariff period 2019-2024 and will remain in force till 31 March 2024.

The Amendment has brought about changes to Appendix-II of the 2019 Tariff Regulations (*Procedure for Calculation of Transmission System Availability Factor for a Month*). Following are the key provisions of the Amendment:

- Shut down of a transmission line due to shifting or modification of such transmission line or otherwise on account of project(s) of National Highways Authority of India (NHAI), Railways, and Border Road Organisation (BRO) being deemed available, provided DICs are not affected by the shutdown of such a transmission line.
- Remedial provisions for disputing the transmission licensee's reason for outage and the Regional Power Committee's (RPC) power to allow the outage hours on provisional basis till the final view by Chairperson of the Central Electricity Authority have been removed.

- Outage period which can be excluded as follows: (a) maximum up to 1 month by Member Secretary, RPC; (b) beyond 1 month and up to 3 months after a decision at RPC; and (c) beyond 3 months by the CERC, for which the transmission licensee will approach the CERC along with reasons, steps taken to mitigate the outage and restoration timeline.

Ministry of External Affairs notifies Offshore Wind Energy Lease Rules 2023

"The Offshore Rules introduce a framework for generating wind power in exclusive economic zones and set out key provisions such as assignment and transfer of lease with the consent of the Central Government for stakeholders."

Ministry of External Affairs through notification dated 19 December 2023 notified the Offshore Wind Energy Lease Rules, 2023 (Offshore Rules). The Offshore Rules provide for standards for construction and management of offshore wind energy projects and guidelines for leasing, managing, and maintaining offshore wind installations within the confines of the exclusive economic zones. Key features of the Offshore Rules are as follows:

- **Lease:** Installation of offshore wind energy projects / transmission projects is only permitted under a lease granted by the Central Government in accordance with the Offshore Rules.
 - **Process:** The Central Government will select the lessee as per the process given under the National Offshore Wind Energy Policy. However, prior to the grant of the lease, clearances from various ministries need to be obtained such as the Ministry of Defense, Ministry of Home Affairs, Ministry of External Affairs, MoEFCC, Department of Space, Ministry of Ports, Shipping and Waterways.
 - **Area:** The area to be covered under the lease will be determined by the Central Government based on the wind resource assessment and marine spatial planning. However, the area covered under the lease will typically vary from 25 to 500 square kilometers – depending on the size of the project.
 - **Tenure:** The lease shall be valid for a period of 5 years (3 years given initially, which can be extended by 2 years) for resource measurement, related studies and surveys. After the expiry of 5 years – the lease will expire, and all clearances provided to the lessee shall be withdrawn – unless the lessee has begun work to set up the wind energy capacity.

To construct and operate the offshore wind energy project, the lease will be extended for 35 years on a case-to-case basis subject to the viability and safety of the project.

Further, if the aforesaid study / survey does not commence in 6 months from the effective date of the lease, the Central Government has the right to cancel the lease and forfeit the security deposit.

- **Rights of the Lessee:** While the lessee will have an exclusive right to carry on activities in relation to offshore wind energy / transmission and restrict entry into designated lease area, it is not permitted to: (a) sub-lease any part of the lease without the prior approval of the Central Government; (b) explore / extract any minerals and other resources from the sea bed, adjacent waters etc. except offshore wind power generation related works. Further, no royalty is payable for the development of offshore wind energy projects.
- **Transfer / Assignment:** The lessee is not permitted to assign / transfer rights / title / interest in respect of the lease or area covered therein without the written consent of the Central Government.

- *Pre-emptive right*: In the event of an emergency such as natural disaster, civil unrest, external aggression, the Central Government shall have a right of pre-emption of the lease for power generation. However, if the project has been commissioned and is generating power, the lessee shall be paid the cost of the power which could be dispatched due to the aforesaid.
- *Cancellation of lease*: Central Government has the right to cancel the lease in cases such as: (a) violation of terms and conditions of the lease; (b) irreparable environmental damage to flora and fauna; (c) failure to provide documents *re* the project; (d) use of leased area for other unwarranted purposes. However, the Offshore Rules also provide for a remedial period for rectification of such contravention. In the event the failure to fulfill conditions under the lease is attributable to a force majeure event, such a delayed period will be excluded from the time granted for the specific period.

The issuance of the Offshore Rules is a positive step towards harnessing the offshore wind energy potential, however specific negotiated positions in relation to the lease are expected to be seen in the near future.

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