

APP Comments on Draft Guidelines for Tariff Based Competitive Bidding Process for Procurement of Power from Grid Connected Wind Solar Hybrid Projects

SL No	Clause No	Existing Clause	Recommended Clause	Remarks/Rational
1	3.2	Storage <u>may be</u> added to the hybrid project		The Bid Documents should clearly define the requirement of storage capacity. For level playing field, bid tariffs should be compared with similar kind of projects i.e. between projects with storage capacity or between projects with no storage capacity and any comparison between projects with storage capacity vis-a-viv projects with no storage capacity may please be avoided.
2	3.2 (b)	providing higher energy output for a given capacity (bid/ sanctioned capacity) at delivery point, by installing additional capacity of wind and solar power in a wind	providing higher energy output for a given capacity (bid/ sanctioned capacity) at delivery point, by installing additional capacity of wind and solar power in a	The Guidelines/SBD should clearly define the utilization of surplus power (i.e. power available after the requirements of charging of storage

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		solar hybrid project required for charging of storage facility; and	wind solar hybrid project required for charging of storage facility <u>and any surplus power will be bought by the Procurer at the same PPA Tariff;</u> and	facility are met).
3	4 (c) (iii)	As long as the Intermediary Procurer has followed these Guidelines for procurement of hybrid power, the distribution licensee(s) shall be deemed to have followed these Guidelines for procurement of hybrid power.	As long as the Intermediary Procurer has followed these Guidelines for procurement of hybrid power, the distribution licensee(s) shall be deemed to have followed these Guidelines for procurement of hybrid power. <u>The HPG to be indemnified by the Intermediary Procurer or the Procurer as the case maybe and monetary compensation will be provided to the HPG for any loss that the HPG may suffer for any dispute between the Intermediary Procurer and the distribution licensee(s) in this regard.</u>	The HPG may not be penalized for any dispute between the Intermediary Procurer and the distribution licensee(s) for any compliance related issues in regard to the Guidelines.

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4	6.1 (d)	However, till the time the SBDs are notified by the Central Government, for purpose of clarity, if the Procurer while preparing the draft RfS, draft PPA, draft PSA and other Project agreements provides detailed provisions that are consistent with the Guidelines, such detailing will not be considered as deviations from these Guidelines even though such details are not provided in the Guidelines.	However, till the time the SBDs are notified by the Central Government, for purpose of clarity, if the Procurer while preparing the draft RfS, draft PPA, draft PSA and other Project agreements provides detailed provisions that are consistent with the Guidelines, such detailing will not be considered as deviations from these Guidelines even though such details are not provided in the Guidelines. <u>Intermediary Procurer or the Procurer as the case maybe, to take approval from Appropriate Commission for issuing such draft RfS, draft PPA, draft PSA and other Project agreements.</u>	Approval from Appropriate Commission may prevent any dispute in future.
5	6.1 (e)	Further, in case of an ongoing bidding process, if the bids have already been submitted by bidders prior to the	Further, in case of an ongoing bidding process, if the bids have already been submitted by bidders prior to the	Approval from Appropriate Commission may prevent any dispute in future.

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		notification of these Guidelines and/or SBDs, then if there are any deviations between these Guidelines and/or the SBDs and the proposed RfS, PPA, PSA (if applicable), the RfS, PPA and the PSA shall prevail.	notification of these Guidelines and/or SBDs, then if there are any deviations between these Guidelines and/or the SBDs and the proposed RfS, PPA, PSA (if applicable), the RfS, PPA and the PSA shall prevail. <u>Intermediary Procurer or the Procurer as the case maybe, to take approval from Appropriate Commission for issuing such RfS, PPA and the PSA.</u>	
6	6.2 (a) (b) (c) (d) (e) (f)	(a) Land acquisition: Identification of the 100% (hundred per cent) land at the time of bid submission and submission of documents / Lease Agreement to establish possession and right to use 100 % (hundred per cent) of the required land in the name of the HPG for a period not less than the complete term of PPA, on or before the Scheduled Commissioning Date (SCD).		We request to keep the preparatory activities to identification of land. Submission of documents/lease agreements prior to award of the Project (i.e. during Bid Submission) may unnecessarily put financial burden on the HPG(s) and is not practical. Similarly, other approvals may not be required if the bid is

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		<p>(b) No Objection Certificate (NOC)/ Environmental clearance (if applicable) for the Project.</p> <p>c) Forest Clearance (if applicable) for the land for the Project.</p> <p>d) No objection certificate (NOC) from Ministry of Defence (if applicable).</p> <p>e) A letter from State Transmission Utility (STU)/ Central Transmission Utility (CTU), as applicable, confirming technical feasibility of connectivity of the plant to STU/ CTU substation.</p> <p>f) Any other clearances (if any), as may be legally required.</p>		<p>unsuccessful. Hence all these approvals/clearances and land related documents may be insisted upon during SCD and not during bid submission.</p>
7	7.2	<p>The Procurer may specify a ceiling tariff and in that case bidder has to quote tariff not more than that tariff.</p>	<p>The Procurer may specify a ceiling tariff and in that case bidder has to quote tariff not more than that tariff. <u>However, for projects with storage capacity such ceiling of tariff to be avoided by the</u></p>	<p>Storage capacity is relatively a new technology in India and it may be difficult to correctly estimate a ceiling tariff for hybrid projects with storage capacity. Hence ceiling of</p>

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			<u>Procurer.</u>	tariff for projects with storage capacity may not be insisted upon.
8	8.1	PPA Period: As the PPA period influences the tariff by determining the period over which the investment is returned to the investor, longer PPA is favoured for lower tariffs. The PPA period should thus be not less than 25 years from the date of commissioning of <u>the first part capacity of the Projects.</u>	PPA Period: As the PPA period influences the tariff by determining the period over which the investment is returned to the investor, longer PPA is favoured for lower tariffs. The PPA period should thus be not less than 25 years from the date of commissioning of <u>the last part capacity of the Projects.</u>	The existing clause is in contradiction with Clause 17.1 which clearly states that “Irrespective of dates of part commissioning, the <u>PPA will remain in force for a period of 25 years from the SCD or from the date of full commissioning of the projects,</u> whichever is earlier”. Intent of Clause 17.1 may please be followed.
9	8.1	...the relevant transmission utilities and system operators permits operation of the Wind Power Project beyond the initial PPA period of 25 years.	...the relevant transmission utilities and system operators permits operation of the Wind <u>Solar Hybrid</u> Power Project beyond the initial PPA period of 25 years.	Maybe erroneously omitted.

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10	8.2.1	<p>The HPG will declare the annual CUF of its Project at the time of signing of PPA and will be allowed to revise the same once within first three years of COD.</p> <p>Calculation of CUF will be on yearly basis from 1st April of the year to 31st March of next year. <u>The declared annual CUF shall in no case be less than 30 per cent.</u></p>	<p>The HPG will declare the annual CUF of its Project at the time of signing of PPA and will be allowed to revise the same once within first three years of COD.</p> <p>Calculation of CUF will be on yearly basis from 1st April of the year to 31st March of next year. <u>The declared annual CUF shall in no case be less than 30 per cent.</u></p>	<p>It is a well-known fact that individually Solar Projects achieves less CUF. For the HPG(s), to maintain a minimum CUF of 30%, it would require a larger share of Wind Capacity installation, essentially restricting Solar Capacity portion which may not be in sync with National Solar Mission. Hence, a minimum CUF may not be insisted upon.</p>
11	8.2.2	<p>In case the project supplies energy less than the energy corresponding to the minimum CUF, the HPG will be liable to pay to the Procurer, penalty for the shortfall in availability of energy. This will, however be relaxable to the extent of grid non-availability for evacuation, which is beyond the control of the HPG. The</p>	<p>This clause may please be deleted.</p>	<p>Renewable Projects are largely dependent on nature which are outside the reasonable control of HPG(s). Hence, it is requested that penalty may not be insisted upon in case of generation /supply shortfall due to unavailability of wind and/or solar irradiation.</p>

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		amount of such penalty will be calculated @ 50% (fifty percent) of the PPA tariff for the shortfall in energy terms, in accordance with the terms of the PPA.		
12	8.2.3	In case of availability of power more than the declared annual CUF specified, <u>HPG will be free to sell it to any other entity provided first right of refusal will vest with the Procurer(s). In case the Procurer purchases the excess generation,</u> the same may be done at the PPA tariff, and provision to this effect shall be clearly indicated in the RfS document.	In case of availability of power more than the declared annual CUF specified, <u>the Intermediary Procurer or the Procurer as the case maybe, to purchase the excess generation</u> and the same may be done at the PPA tariff, and provision to this effect shall be clearly indicated in the RfS document.	As mentioned in Clause 8.2.1, the CUF will be calculated on a yearly basis. In such a scenario, it will be very difficult to estimate availability of power which is more than declared CUF during a specific time period within a year considering the infirm nature of renewable sources of energy. Similarly, it will also be difficult to find a buyer for such a small period. Hence, any excess generation may please be purchased by the Intermediary Procurer of the Procurer as the case maybe at the same PPA tariff.

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13	8.3	Repowering: The HPG will be free to re-power their wind capacity only during the PPA duration. However, the Procurer will be obliged to buy power only as per terms of PPA and any excess generation will be dealt as specified in clause 8.2 of these Guidelines.	Repowering: The HPG will be free to re-power their wind solar hybrid capacity only during the PPA duration. However, the Procurer will be obliged to buy power only as per terms of PPA and any excess generation will be dealt as specified in clause 8.2 of these Guidelines.	Maybe erroneously omitted.
14	8.4	Payment Security		All payment security may have suitable provisions for creation of charge in favour of project lenders.
15	8.4.1 (c)	In addition to a) & b) above, the Procurer <u>may also choose to</u> provide State Government Guarantee, in a legally enforceable form, ensuring that there is adequate security to the HPG, both in terms of payment of energy charges and termination compensation, if any.	In addition to a) & b) above, the Procurer shall provide State Government Guarantee, in a legally enforceable form, ensuring that there is adequate security to the HPG, both in terms of payment of energy charges and termination compensation, if any.	For a better payment security such Guarantee to be provided by the respective State Government(s). This is in line with Clause 8.4.2 (b) (ii), wherein the Distribution licensee is insisted upon to provide State Government Guarantee in favour of the Intermediary Procurer.
16	8.4.2	State Government Guarantee, in a legally	State Government Guarantee, in a legally	A formal confirmation from the

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	(b) (ii)	enforceable form, such that there is adequate security, both in terms of payment of energy charges and termination compensation, if any. <i>[for the purpose of this clause, the Tri-Partite Agreement (TPA) signed between Reserve Bank of India, Central Government and State Government shall qualify as State Government Guarantee covering the security for payment of energy charges].</i>	enforceable form, such that there is adequate security, both in terms of payment of energy charges and termination compensation, if any. <i>[for the purpose of this clause, the Tri-Partite Agreement (TPA) signed between Reserve Bank of India, Central Government and State Government shall qualify as State Government Guarantee covering the security for payment of energy charges].</i> <u>The Intermediate Procurer to formally confirm in writing to the HPG about the availability and enforceability of the State Government Guarantee as a Payment Security.</u>	Intermediate Procurer to the HPG about the availability and enforceability of the State Government Guarantee as a Payment Security will immensely help in achieving financial closure.
17	8.5.3	... However, Change in Law shall not include any change in <u>(a) taxes on corporate income or any change in any</u>	However, Change in Law shall not include any change <u>in any withholding tax on income or dividends.</u>	Corporate income tax and Customs duty on imported equipment are factored in tariff computation. It

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		<p><u>withholding tax on income or dividends;</u> <u>and (b) Custom duty on imported equipment.</u></p>		<p>would not be out of place to mention that storage capacity is relatively new in India and dependency only on domestic solar modules may not be practical and feasible.</p> <p>Any increase in the rates of corporate income tax and customs duty on imported equipment will adversely impact the HPG and vice versa any decrease will disallow passing on the benefit to the ultimate consumer.</p> <p>Hence, changes in corporate income tax and customs duty on imported equipment may please be allowed under change in law.</p>
18	8.7.2 (last para)	<p>...Possible conditions for exclusion of Generation Compensation, on account of Backdown purposes, shall be clearly</p>	May please be deleted.	HPG(s) may not be penalized for any back down request from the Procurer, hence no exclusion should

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		specified in the RfS and the PPA.		be allowed for compensation.
19	8.8.2 (d)	Adjusted Equity	The entire Equity (without any adjustment) funded in India Rupees may please be considered.	It is very difficult to comprehend how the adjusted equity will be calculated, and the provisions may be open to interpretation. In addition, it may please be noted that many foreign equity funds take keen interest in the Indian Renewable Energy Sector and there could be demand for further adjustment for foreign exchange variation, withholding tax etc., which may further complicate adjusted equity calculations. Hence, it is requested that the proposed adjustment may not be insisted upon.
20	8.8.2 (e) (ii) last	...Provided that if all or any part of the Debt Due is convertible into Equity at the option of Senior Lenders and/or the	...Provided that if all or any part of the Debt Due is convertible into Equity at the option of Senior Lenders and/or the	In general projects are funded by debt or equity or combination of both. If convertible debt are not

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	para	Concessionaire, it shall for the purposes of this Agreement be deemed not to be Debt Due even if no such conversion has taken place and the principal thereof shall be dealt with as if such conversion had been undertaken...	Concessionaire, it shall for the purposes of this Agreement be deemed not to be Debt Due even if no such conversion has taken place and the principal thereof shall be dealt with as if such conversion had been undertaken. <u>However, in such case the convertible debt will be considered as Equity.</u>	considered as Debt Due, then the same may please be considered as Equity.
21	10.2.2 (b)	Liquidity: It is necessary that the bidder has sufficient cash flow/ internal accruals/ any bank reference to manage the fund requirements for the project. Accordingly, the Procurer may also stipulate suitable parameters such as annual turnover, internal resource generation, bank references/ line of credit, bidding capacity, etc.		The Guidelines/SBD should clearly define the liquidity requirement to avoid any ambiguity and interpretation bias.
22	13.4	Subject to provisions of the Act, the distribution licensee or the intermediary	Subject to provisions of the Act, the distribution licensee or the intermediary	The timeline of 60 days for tariff adoption is a welcome addition as it

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		<p>procurer, as the case may be, shall approach the Appropriate Commission for adoption of tariffs by the Appropriate Commission in terms of Section 63 of the Act. In case, the Appropriate Commission does not decide upon the same within sixty days, <u>the tariffs shall be deemed to be have been adopted by the Appropriate Commission.</u></p>	<p>procurer, as the case may be, shall approach the Appropriate Commission for adoption of tariffs by the Appropriate Commission in terms of Section 63 of the Act. In case, the Appropriate Commission does not decide upon the same within sixty days. <u>It is the responsibility of the Procurer to secure adoption of tariffs by the Appropriate Commission. The HPG(s) will be indemnified and monetary compensation will be provided to the HPG(s) for any loss that the HPG(s) may suffer on account of delay and/or tariffs not adopted by the Appropriate Commission.</u></p>	<p>removes the uncertainty with regard to tariff adoption. However, Section 63 of the Electricity Act does not provide for any deemed adoption of tariffs by the Appropriate Commission. Hence this provision may lead to legal challenges in the future and may result in avoidable litigation. This aspect should be examined thoroughly by MNRE.</p> <p>In addition, since it is the responsibility of the Procurer and beyond the reasonable control of the HPG(s), HPG(s) may please be compensated for any monetary loss if there are delays and/or tariffs not adopted by the Appropriate Commission.</p>

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23	15.2	... An extension for the attainment of the financial closure can however be considered by the Procurer, on the sole request of the HPG, <u>on payment of a penalty as specified in the PPA...</u>	... An extension for the attainment of the financial closure can however be considered by the Procurer, on the sole request of the HPG, <u>on payment of a penalty as specified in the PPA</u> ...	Financial closure is dependent of various factors which may be beyond the reasonable control of the HPG(s) (for e.g. financial market conditions, liquidity, temporary circulars issued by RBI in the nature of additional appraisal requirements etc) which sometime may delay the financial closure. Hence, it is requested that HPG(s) may not be penalized for any delay in attainment of the financial closure.
24	16.1	The successful bidder, if being a single company, shall ensure that its shareholding in the SPV/project company executing the PPA shall not fall below 51% at any time prior to 1 (one) year from the COD	The successful bidder, if being a single company, shall ensure that its shareholding in the SPV/project company executing the PPA shall not fall below 51% at any time prior to 1 (one) year from the COD. <u>However, 100% dilution of the shareholding of the successful</u>	Foreign equity funds take keen interest in the Indian Renewable Energy Sector. Such funds also may look for exit after the initial development of the project. Such exit may please be allowed after proper scrutiny of the incoming

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			<u>bidder in the SPV/project may be allowed after financial closure with written permission from the Procurer.</u>	shareholder by the Procurer.
25	17.3	... Delay in commissioning, beyond the SCD shall involve penalties on the HPG, as detailed out in PPA.	Delay in commissioning, beyond the SCD shall involve penalties on the HPG, as detailed out in PPA. <u>However, penalties won't be applicable if such delays can be attributable to events which are beyond the reasonable control of the HPG(s).</u>	HPG(s) may not be penalized for any delays which are beyond its reasonable control.

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