

Regulatory Framework for Development of Offshore Wind Projects in India, By Ajoy Halder, Halder & Associates

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1. Overview of Electricity Act, 2003

Overview: Under Indian law, both the Center/ Federal Government and the State Government have the authority to legislate on a matter related to electricity. The principal legislation that governs India's electricity sector is the Electricity Act, 2003 ("**Electricity Act**"). The Electricity Act consolidates the laws relating to the generation, transmission, distribution, trading, and use of electricity. The Electricity Act also provides for measures towards rationalization of electricity tariff, ensuring transparent policies regarding subsidies, promotion of efficient and environmentally friendly policies.

Generation of Electricity: The generation of electricity does not require any license. Any person may set-up a generating company in order to establish, operate, and maintain an electricity generating station. However, generation stations will need to comply with the technical standards, inter alia, relating to grid connectivity.

Generation Company Right to Sale Power: A generation company can sell power to (a) a discom, (b) consumers directly through open access, (c) a power trading company, or (d) on spot market.

2. Offshore Wind Policy

The Central Government, through the Ministry of New and Renewable Energy ("**MNRE**"), frames policies and schemes for promoting electricity generation through renewable energy sources. MNRE is the nodal ministry for all matters relating to renewable energy, and the National Institute of Wind Energy ("**NIWE**") is the nodal agency (e.g., for execution of agreement) for the development of offshore wind energy in the country.

MNRE has accordingly notified the National Offshore Wind Energy Policy – 2015 ("**Offshore Wind Policy**") to ensure optimum exploitation of offshore wind energy in India. ***This Offshore Wind Policy is the primary policy decision-making document for offshore wind energy development, including setting up of offshore wind power projects and research & development activities.*** We have discussed below some of the relevant matters under the Offshore Wind Policy:

(a) International Competitive Bidding

The Offshore Wind Policy requires NIWE to call for proposals for the development of offshore wind power projects through an open international competitive bidding process ("**ICB**"). NIWE will enter into a contract with the successful bidder for granting the right to explore and exploit wind energy in the allocated block(s). The selection of private developers through the ICB process will be on the basis of tariff, total cost of project, sharing of production benefits or revenue, rate of lease, etc.

The broad parameters of the contract will include the time frame for completion of the installation & commissioning of the wind farm, period of contract, committed Minimum Work Programme (MWP) in terms of project capacity in the allocated block, monitoring & inspection by MNRE/NIWE and decommissioning plan.

(b) Clearances

The Offshore Wind Policy provides that NIWE will accept applications for Clearances/NOCs from the private developers and coordinate with concerned Ministries/Departments for the Clearances/NOCs. However, NIWE will only act as a facilitator for getting Clearances/NOCs, and applications will be dealt in entirety by the concerned Ministry/Department.

(c) Power Purchase Agreement

The Offshore Wind Policy requires a designated agency (Government body) or distribution utility (usually State utility) or a private company to enter into a power purchase agreement (PPA) with the offshore wind power developers. This entity to directly purchase the offshore wind power as per the norms and guidelines fixed by the appropriate Electricity Regulatory Commission as per the Electricity Act.

(d) Power Evacuation and Infrastructure

The Offshore Wind Policy requires the Central Transmission Utility (CTU) /State Transmission Utility (STU) to provide necessary onshore infrastructure for evacuating the power generated by the offshore wind project. The Central/ Federal Government may also provide support to the State Governments in the creation of evacuation infrastructure for offshore wind power projects.

(e) Other Incentives under the Offshore Wind Policy.

The Offshore Wind Policy supports the development of offshore wind energy through fiscal incentives. Fiscal and financial incentives available to onshore wind power projects may also be made available to offshore wind power projects. Besides, the Government may promote bundling of power generated from offshore wind power projects with conventional power to bring down the cost of power generated, resulting in better acceptability (**has been done for onshore wind and solar project**).

(f) Studies & Surveys

The Offshore Wind Policy allows NIWE to grant permissions (this is not through competitive bidding) to interested private developers having proven expertise in offshore studies and surveys to collect data on offshore blocks (“**Technical Assessment**”).

Accordingly, the NIWE has issued Guidelines for Offshore Wind Power Assessment Studies and Survey (“**Assessment Guidelines**”). The Assessment Guidelines lay down the qualification requirement, the application process, and other rights and obligations of the private developer with respect to Technical Assessment.

Private developers have the right to use the data collected through Technical Assessment but no right to generate revenue by selling data to any third party. Further, the data from the Technical Assessment will be treated as confidential and property of the Government of India.

However, the Assessment Guidelines clearly provides that the **private developers will have no right to the allocation of the offshore block on account of the survey and studies carried out by them under the Assessment Guidelines. The allocation of offshore wind energy blocks will only be done through ICB.**

3. Draft Offshore Wind Energy Lease Rules, 2019

The Offshore Wind Policy provides a basic framework for the development of offshore wind energy in India. As per the Offshore Wind Policy, the offshore blocks for wind energy are to be allocated to private developers through ICB. In order to regulate the leasing mechanism of offshore blocks for wind energy, lease rules are required to be framed.

Accordingly, the Government has circulated Draft Offshore Wind Energy Lease Rules, 2019 (“**Draft Rules**”) for stakeholders' comments. The Draft Rules are meant to regulate the **leasing mechanism of offshore blocks for wind energy**.

The Draft Rules, among others, provides:

- The offshore blocks will be leased out to the private developers for 35 years, including 5 years of prospecting and 30 years of project installation and operation;
- No person/entity shall install/commission an offshore wind energy project except in pursuance of an offshore wind energy lease granted under this Draft Rules;
- Activities related to the assessment of offshore wind energy potential through related studies and surveys are also to be undertaken under the lease; and
- Provisions related to fees, identification of project sites, penalties, cancellation of the lease, and restriction on wind energy generation for national security.

About the Author

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Ajoy has over 16 years of experience advising on project development, project finance, and M&A transactions across Asia. He has advised on most aspects of energy and infrastructure transactions, including on PPPs/concession agreements, PPAs, PSAs, EPC/construction contracts, project finance, and M&A transactions. The sectors in which he specialises are energy (solar, onshore & offshore wind, hydro, thermal), transport, construction, water, healthcare, real estate, social infrastructure, oil & gas, and technology.

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