Newsletter

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Energy

Renewables

- *Ministry of New and Renewable Energy ("**MNRE**") to blacklist developers for delay in projects*
  The MNRE released an order on 15 February 2023, wherein it directed that if any renewable project developer fails to comply with the scheduled commercial operation date with respect to its project, it will result in that project developer to be blacklisted for a period of 3 to 5 years. Additionally, the bank guarantee provided by the project developers will also be encashed by the MNRE.

  The provision of the circular which provides the powers to PSUs to blacklist developers will be applicable to all tenders/ bids and contracts as well, in accordance with the General Financial Rules, 2017.

- *Notification of Draft CEA Regulations for Great Indian Bustard Area*
  On 3 February 2023, the Central Electricity Authority (CEA) has issued Draft Central Electricity Authority (Construction of Electric Lines in Great Indian Bustard Area) Regulations, 2023, ("Draft GIB Regulations") in light of a case before the Supreme Court on the issue of threat to the endangered species, making mandatory for electric lines to be underground or overhead through the 'Great Indian Bustard (GIB) Area'. In this regard, the Supreme Court vide its orders dated 22 April 2022 had held that no new overhead power lines to be laid in potential habitats of the GIB unless approved by the court-appointed committee ("SC Orders").
  As per the Draft GIB Regulations, electric lines of 33 kV and below voltage level passing through GIB area will require undergrounding, and electric lines of above 33 kV voltage level passing through GIB area will be overhead lines installed with bird flight diverters. While the low voltage power lines were earlier interpreted to be in lines with voltage of 66kV or below, this has been changed in the Draft GIB Regulation to 33kV or below. While the Draft GIB Regulations has not been notified yet, and comments / suggestions were awaited from the public before March 3, 2023. Several environmental activists have requested the CEA for withdrawal of the Draft GIB Regulations, as it would be in violation of the SC Orders, if adopted.

- *Amendments to CERC (Connectivity and General Network Access to the Inter-State Transmission System) Regulations, 2022 ("**GNA Regulations**") for drawal of power from renewable sources*
  On 7 June 2022, the CERC had issued the GNA Regulations to facilitate General Network Access ("**GNA**") by allowing generators to connect and evacuate power through the Inter-State Transmission System ("**ISTS**") without designating the location of the offtaker. Unlike the erstwhile ISTS open access system where the generators were required to identify a consumer prior to grant of open access, GNA provides flexibility to the generators by providing them with open access rights without having to specify the injection point and drawal point.

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Recently, on 1 April 2023, the CERC issued the (Connectivity and General Network Access to the Inter-State Transmission System) Regulations, 2022 (First Amendment) Regulations, 2023, amending the GNA Regulations (effective from 5 April 2023) by *inter-alia*, inserting a new provision which defined general network access-renewable energy (GNA_{RE}) as the open access to the ISTS granted under these regulations for drawal of power exclusively from renewable sources. It also defined temporary general network access-renewable energy ($T\text{-}GNA_{RE}$) as the T-GNA open access to the ISTS granted under the GNA Regulations for drawal of power exclusively from the renewable sources.

- *Amendments to Electricity (Promoting Renewable Energy Through Green Energy Open Access) Rules, 2022 ("**Green Energy Rules**") in relation to banking settlement period*

  On 27 January 2023, the Ministry of Power notified the Electricity (Promoting Renewable Energy Through Green Energy Open Access) Amendment Rules, 2023, which *inter-alia* amended the Green Energy Rules with respect to power produced from waste-to-energy plants, by *inter-alia* changing the banking settlement period from monthly to a banking cycle, thereby providing flexibility to states with different banking settlement periods, and providing for exemption for offshore wind projects from paying additional surcharge.

  Further, it was also clarified that the credit for banked energy will not be allowed to be carried forward and is required to be adjusted during the same banking cycle. In the event there is any surplus banked energy, the same will not be considered. The renewable energy generator will be entitled to Renewable Energy Certificates ("**RECs**") for the lapsed banked energy.

- Waiver of Inter-State Transmission Charges and Losses for Renewable Energy Projects

  The Central Electricity Regulatory Commission ("**CERC**") has brough in the CERC (Sharing of Inter-State Transmission Charges and Losses) (First Amendment) Regulations, 2023 ("**Amendment Regulations**") waiving interstate transmission system charges for renewable energy generating stations, renewable hybrid generating stations and pumped hydroelectric stations beginning commercial operations by 30 June 2025. This waiver will remain in effect for 25 years. Set out below are some of the applicable waiver periods, as notified by the Amendment Regulations:

  - Battery storage systems (charged using renewable energy or renewable hybrid generating stations, operating before 30 June 2025) will be eligible for a waiver of transmission charges for 12 years.
  - Solar power projects selling power to entities with renewable purchase obligations will be eligible for a waiver of transmission charges for 25 years from the commercial operation date.
  - Hydro-generating stations with power purchase agreements signed between 1 December 2022, and 30 June 2025 (where construction work is awarded by 30 June 2025), will be eligible for a waiver of transmission charges for 18 years from commercial operation date.

The abovementioned projects that go into commercial operation after 30 June 2025, but prior to 30 June 2028, or new hydro projects where construction work is awarded and the power purchase agreement is signed after 30 June 2025, will be also eligible for a waiver of transmission charges.

- *National Green Hydrogen Mission – Targets*

  Phase 1 (2023-24 to 2025-26): Primary focus on creating demand and increasing the manufacturing capacity of domestic electrolysers. Regulatory frameworks and standards will also be established for proper engagement with international norms.

  Phase 2 (2026-27 to 2029-30): Green hydrogen expected to become cost-competitive with fossil-fuel-based alternatives in the refineries and fertiliser sector. Depending on the cost structure and market demand, the feasibility of green hydrogen-based projects in steel production, transport and shipping sectors on a commercial scale will be explored.

  It is expected that by 2030, the associated renewable energy capacity addition will be around 125 Gigawatts. India targets to

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meet 50% of its energy requirement from renewable energy by 2030.

- *Carbon Credit Trading Scheme*
  The union Ministry of Power ("**MoP**") has come up with the much-anticipated draft Carbon Credit Trading Scheme ("**CCTS**") to set up a framework for the Indian carbon credit market and sought comments from stakeholders by 14 April 2023. This is in consonance with the Energy Conservation (Amendment) Bill, 2022 which was issued in December 2022, which had a provision for empowering the central government to *'specify the carbon trading scheme'* in consultation with the Bureau of Energy Efficiency.

  The CCTS provides that an 'Accredited Carbon Verifier' means an agency accredited by the BEE to carry out validation or verification activities in respect of the CCTS. The 'Carbon Credit Certificate' means the certificate issued to the registered entity by the central government, or any agency authorised by it, in the CCTS where each certificate issued will represent reduction or removal of one tonne of CO_2 equivalent. The 'CCTS' means the scheme for reduction or removal of greenhouse gas emissions notified by the central government.

  This scheme also provides for setting up of the Indian Carbon Market Governing Board ("**ICMGB**"), whose chairmen will be the secretaries of the MoP and Ministry of Energy, Forest and Climate Change. The governance of the Indian Carbon Market and direct oversight of its administrative and regulatory functioning will vest with the ICMGB which will recommend procedures for institutionalising the Indian carbon market for the approval of the central government.

Non-Renewables

- *Unified Tariff on Natural Gas Pipelines*
  On 28 March 2023, the Petroleum and Natural Gas Regulatory Board ("**PNGRB**") notified the Natural Gas Regulatory Board (Determination of Natural Gas Pipeline Tariff) Amendment Regulations, 2023 to allow unified tariff on natural gas pipelines. The PNGRB notified levelized unified tariff of INR 73.93 per metric million British thermal unit (MMBTU) and created three tariff zones for unified tariff, where the first zone is up to a distance of 300 kms from gas source, second zone is 300 – 1200 kms and third zone is beyond 1200 kms. The zonal unified tariffs will be effective from 1 April 2023.

  The national gas grid, which covers all the interconnected pipeline networks owned and operated by major Indian Public Sector Undertakings, such as *inter-alia*, Indian Oil Corporation Limited, and Oil and Natural Gas Corporation Limited, will keep expanding for unified tariff with the commissioning of newer interconnected pipelines. These entities will get the tariff as per their entitlement while the customers will pay for unified tariff. In this regard, the amendment provides for a settlement mechanism via which such difference in tariff will be settled between the pipeline entities.

- *Draft amendments to the Offshore Areas Mineral (Development and Regulation) Act, 2002 ("**Offshore MDR Act**")*
  The Ministry of Mines ("**MoM**") invited comments on the proposed amendments to the Offshore MDR Act, which regulates mineral resources in offshore areas which include Indian territorial waters (up to 12 nautical miles), exclusive economic zones (between 12 and 200 nautical miles along the coast), and other maritime zones. Key features of the draft amendments include:
  – Production leases and exploration license: In order to improve transparency in allocating mineral resources, production leases will be granted only through auction by competitive bidding. The provision of a composite licence, i.e., an exploration licence-cum-production lease (a two-stage operating right granted for the purpose of undertaking exploration operation followed by production operation) was also introduced and the same will be granted through auction by competitive bidding only.
  – Resolving pending litigations: It was also stated that the rights of the holder or applicant of operating rights (reconnaissance permit, exploration licence or production lease) granted prior to the commencement of the

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proposed amendments will lapse upon the amendments coming into force. This would help resolve pending litigations over previous irregular allocation of blocks.
- Limitations on area: The amendments noted that a person cannot acquire more than 45 minutes latitude by 45 minutes longitude in respect of any mineral or prescribed group of associated mineral under one or more exploration licence, composite licence and production lease (all taken together).
- Offshore Areas Mineral Trust: A non-lapsable Offshore Areas Mineral Trust (to be maintained under Public Account of India) will be set up to ensure the availability of funds for exploration, mitigation of adverse impacts of mining, and disaster management, and will be funded by an additional levy, not exceeding one third of the royalty on the production of minerals.

- *Ministry of Power notifies 40% Renewable Generation Obligation ("**RGO**")*

On 27 February 2023, the Ministry of Power notified the applicability of RGO to firms constructing coal-based thermal power stations from April 2023 onwards. Under this, the companies will have to set up renewable energy projects of 40% capacity of such coal-fired power stations.

A coal/ lignite-based thermal generating station with a commercial operations date ("**COD**") of the project between 1 April 2023, and 31 March 2025, will be required to comply with an RGO of 40% by April 1, 2025. Any other coal/ lignite-based thermal generating station with COD of the project after 1 April 2025 will be required to comply with an RGO of 40% by the COD.

However, any captive coal/ lignite based thermal generating station will be exempted from the requirement of RGO subject to it fulfilling the Renewable Purchase Obligations as mandated under the Electricity Act, 2003 and notified by the Central Government.

- *Government amends the export policy for biofuels.*

Under the National Biofuel Policy, 2018, a license is required for both exports and imports of biofuels. Biofuels include ethyl alcohol, petroleum oil and oils obtained from bituminous minerals, biodiesel and mixtures. On 28 August 2018, the Directorate General of Foreign Trade ("**DGFT**") issued a notification which imposed restrictions on export of biofuels after putting similar conditions for its imports by *inter-alia* stating that the export of items such as (a) ethyl alcohol and other spirits; (b) petroleum oils; and (c) biodiesel was permitted under license only for '*non-fuel*' purposes ("**2018 Notification**").

On 22 March 2023, the DGFT amended the 2018 Notification to the extent that export of biofuels from Special Economic Zones / Export Oriented Units, are allowed for *'fuel'* as well as *'non-fuel'* purposes without any restriction if the biofuel is produced using only imported feed stock.

Roads and Highways

- *Ministry of Road Transport & Highways ("**MoRTH**") amends Change of Control Obligations for Model Concession Agreement for Build-Operate-Transfer (toll) Projects*

The present Model BOT (Toll) Concession Agreements issued by the MoRTH permits concessionaires to undertake change in ownership 2 years after the commercial operation date ("**COD**") of the project ("**Equity Lock In Restriction**"). However, in order to alleviate financial distress in the sector, the model BOT (Toll) concession agreement was amended by MoRTH *vide* its notification dated 23 May 2022, to reduce the period of the Equity Lock in Restriction from 2 years to 1 year subject if the following conditions are satisfied by the concessionaire:
- Issuance of the completion certificate with all punch list items completed. The period of 1 year (from COD) will be reckoned from the date of completion of the punch list items; and
- The Concessionaire should not be in default of:
  - Payment of any premium to the NHAI; and
  - Operation and maintenance obligations under the concession agreement.

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On 21 March 2023, MoRTH has issued a circular clarifying that the reduction in the period of the Equity Lock In Restriction and all attendant conditions shall also apply to existing BOT (Toll) projects. Therefore, any concessionaire of subsisting BOT (toll) contracts will also be allowed to undertake change of control from a period of 1 year of the COD.

- Supplementary Agreement for 100% change of shareholding and refinancing in respect of PPP projects

  On 10 December 2021, the NHAI issued the policy circular on treatment of ongoing and accrued claims upon a 100% divestment by existing promoters in BOT(Toll) and BOT (Annuity) projects. In its circular, NHAI has directed that upon 100% equity divestment, the outgoing promoter will not have any residual rights over the accrued claims (which shall vest with the new promoter) and a supplementary agreement will be signed with the concessionaire at the time of 100% share transfer.

  On 13 February 2023, the NHAI issued a clarification to the 10 December 2021 circular stating that to verify the completion of all the works in scope along with any outstanding issues (such as vigilance compliance, maintenance issues, etc.) pending, the same will be taken up by the transferee entity. In all future cases of share transfer / refinancing (after that date of the 13 February 2023 circular), the concessionaire should share the status of pending works / punch-list items for further consideration of the application of refinancing and share transfer. For this purpose, a supplementary agreement will also be executed by NHAI with the concessionaire (including for previously approved cases).

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