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Renewable energy projects in India

Khaitan & Co

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Projects

General government authorisation

What government authorisations must investors or owners obtain prior to constructing or directly or indirectly transferring or acquiring a renewable energy project?

Under the Electricity Act, generation of energy is a delicensed activity. Prior to the construction of a project, certain site-specific approvals may be required (if applicable) such as forest clearance and approvals from defence establishments, the Airports Authority of India and the Archaeological Survey of India.

Projects are required to comply with technical standards prescribed by the CEA, including those in relation to construction, safety and maintenance. In order to commence commercial operations, the following approvals may also be required: electrical safety approval from the CEA; commissioning certificate; and power evacuation approval.

Typically, environmental impact assessment studies are not required for renewable energy projects except for offshore wind power projects, biomass power plants and municipal waste plants exceeding certain capacity. The classification of industrial sectors by Central Pollution Control Board recognises solar power generation through solar PV cells, wind power and mini hydel power as non-polluting industries. Such industries are classified in the 'white' category and thus consents from pollution control boards under the Air (Prevention and Control of Pollution) Act 1981 and Water (Prevention and Control of Pollution) Act 1974 are not required.

Additionally, micro-level corporate, labour and employment and land revenue approvals may be required.

Offtake arrangements

What type of offtake arrangements are available and typically used for utility-scale renewables projects?

The largest offtakers in India are the distribution utilities, and one of the key risks for a project developer is the offtaker risk. Certain distribution utilities in India at present do not have good credit ratings and are under financial stress that has led to accumulation of debt. The financial health of distribution utilities has posed an impediment for project developers entering into offtake arrangement. To offset such risks, in one of the tenders for a solar energy park, a state government offered a guarantee to secure offtaker default. The GOI launched Ujwal Discom Assurance Yojana in 2015 for financial turnaround and the operational improvement of distribution utilities. Also, to mitigate such offtaker risk, certain MNRE schemes establish NTPC Limited and SECI as counterparties to the power purchase agreements (PPA), since they have a better credit rating than some of the distribution utilities.

Procurement of offtaker agreements

How are long-term power purchase agreements procured by the offtakers in your jurisdiction? Are they the subject of feed-in tariffs, the subject of multi-project competitive tenders, or are they typically developed through the submission of unsolicited tenders?

A renewable energy developer may enter into a PPA with central, stateand private distribution utilities, third parties or captive users. Pursuant to the Electricity Act, a distribution utility can either procure powerthrough bilateral or negotiated PPAs or through a transparent process of competitive bidding conducted in accordance with the bidding guidelines notified by the GOI. The appropriate commission is required toadopt the tariff discovered through bidding. In the case of bilateral or negotiated PPAs, the tariff and terms and conditions of sale of power are subject to a prudence check and approval of the appropriatecommission. Long-term offtake agreements through the competitive bidding route are typical for solar power and, to streamline the process, in August 2017, the MNRE issued the Guidelines for Tariff BasedCompetitive Bidding for Grid Connected Solar Photovoltaic Projects. Generally, wind projects have been awarded based on feed-in tariffs. However, the competitive bidding route has been adopted, at bothcentral and state level, for procuring power. The MOP, in December 2017, issued the Guidelines for Tariff Based Competitive Bidding Process for Procurement of Power from Grid Connected Wind Power Projects. SECI has been designated as the nodal agency for implementation of the MNRE schemes, from time to time, for setting up wind power projects connected to the Inter-State Transmission System. To date, SECI has conducted or is conducting tendering for 8,500MW capacity of such wind power projects. The Tariff Policy envisages the procurement of power from renewable energy sources by distribution utilities only through competitive bidding from a date to be notified by the GOI, except for certain projects. The tariff for hydropower developers is determined by the CERC or SERCs on a cost-plus basis, allowing for a fixed return on equity.

Operational authorisation

What government authorisations are required to operate a renewable energy project and sell electricity from renewable energy projects?

See question 24.

Decommissioning

Are there legal requirements for the decommissioning of renewable energy projects? Must these requirements be funded by a sinking fund or through other credit enhancements during the operational phase of a renewable energy project?

On decommissioning, all municipal and environmental laws with respect to disposal of equipment need to be complied with. Also, SECI has issued an environmental and social management framework which also prescribes conditions for decommissioning of specific solar and hybrid technology projects. The National Offshore Wind Energy Policy 2015 notified by the MNRE, empowers the NIWE to impose conditions requiring the developer to submit a decommissioning and site restoration programme when granting a lease for a proposed offshore wind farm. The programme is made a part of an environmental impact assessment study, and a deposit or a financial guarantee must be submitted by the developer to ensure proper decommissioning. The Guidelines for Development of Onshore Wind Power Projects 2016 also require a wind power project to have a decommissioning plan. The NIWE is entrusted to formulate guidelines for decommissioning wind turbines.

There are no restrictions on the choice of funding for decommission costs (ie, through a sinking fund or through other credit methods).

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