

# LEXOLOGY®

## The legal framework for renewable energy in India

Khaitan & Co

 View In Analytics

India | October 8 2019



Click here to compare the answers in this article to hundreds of others



### Market framework

*Definition of 'renewable energy'*

#### **Is there any legal definition of what constitutes 'renewable energy' or 'clean power' (or their equivalents) in your jurisdiction?**

While the Electricity Act does not provide a definition of renewable energy, there are other legislation and policies at both central and state level providing the definition of renewable energy sources. Among these, the Central Electricity Regulatory Commission (Terms and Conditions for Tariff Determination from Renewable Energy Sources) Regulations 2017 define 'renewable energy' as grid quality electricity generated from renewable energy sources. The term 'renewable energy sources' has been further defined to mean small hydro, wind, solar including its integration with combined cycle, biomass, biofuel cogeneration, urban or municipal waste and other such sources as may be approved by the MNRE. Also, by way of office memorandum dated 8 March 2019, the MOP has now also classified hydro power project stations with a capacity of more than 25MW as a renewable energy source.

*Framework*

#### **What is the legal and regulatory framework applicable to developing, financing, operating and selling power and 'environmental attributes' from renewable energy projects?**

Pursuant to the Electricity Act, certain state electricity regulatory commissions (SERCs) have issued regulations in connection with RPOs. The SERCs stipulate certain percentages for procurement of energy generated from renewable energy sources on the basis of total consumption of electricity within the demarcated areas for supply by the distribution utilities. These regulations apply to entities that are mandated to comply with RPOs and include consumers owning captive power plants and open access users. RPOs are divided into solar and non-solar. Recently, the MOP notified the long-term growth trajectory of RPOs for 2019-20 to 2021-22 (for 2020-21, the RPOs notified for solar is 8.75 per cent and non-solar is 10.25 per cent). The RPOs can also be discharged by purchase of environment attributes sold as intangible energy commodities called renewable energy certificates (REC). As per the memorandum dated 8 March 2019, the MOP also notified hydropower purchase obligation (HPO) as a separate obligation within the non-solar renewable purchase obligation. The HPO will be within the existing non-solar RPO however the percentage of the non-solar RPO will be increased so that the existing non-solar RPO for other renewable sources remain unaffected. To operationalise HPO, the MOP is yet to notify the annual HPO targets and introduce amendments in this regard.

Under the REC framework, a developer sells the electricity generated and the environmental attributes associated with clean energy separately. The entities obligated under the RPO regime from any part of India may purchase these RECs to meet their RPO targets. The RECs are issued by the National Load Dispatch Centre on application by the generator equivalent to the amount of electricity injected into the grid as certified by the State Load Dispatch Centre, and each REC represents 1MWh of energy injected into the grid from renewable energy sources. In order to ensure compliance by entities obligated under the RPO regime to purchase RECs, MNRE has created the RPO compliance cell, which will coordinate with concerned states, the Central Electricity Regulatory Commission (CERC) and SERCs on matters relating to compliance, including periodic reporting. Further, in the event of default, such mechanism will ensure appropriate actions being taken against defaulting entities promptly.

*Government incentives*

#### **Does the government offer incentives to promote the development of renewable energy projects? In addition, has the government established policies that also promote renewable energy?**

At central or federal level, the Tariff Policy and the National Electricity Policy 2005 broadly encourage energy from renewable sources. The MNRE launched NSM, the National Offshore Wind Energy Policy, and the Policy for Repowering of the Wind Power Projects as energy source specific policies.

According to the CERC (Terms and Conditions for Tariff Determination from Renewable Energy Sources) Regulations 2017, all renewable energy power plants except biomass power plants with installed capacity of 10MW and above and non-fossil fuel-based cogeneration plants shall be given a 'must run' status and not be subject to 'merit order despatch' principles.

Pursuant to the Tariff Policy, the CERC has exempted payment of inter-state transmission charges and losses for solar and wind energy generators for 25 years from commissioning for projects set up through competitive bidding, based on compliance with certain terms and conditions. Further, in view of shorter gestation period of renewable energy projects, the GOI has issued directions to the CERC to accord early regulatory approval for the transmission system associated with renewable energy projects amounting to 66.5GW.

The National Offshore Wind Policy 2015 empowers the GOI to bundle power generated from offshore wind power projects with conventional power to reduce the cost of power generated. In August 2016, the MNRE released the Policy for Repowering of Wind Power Projects under which turbines with a capacity of 1MW and below are eligible for repowering. Pursuant to the policy, IREDA provides an interest rate rebate of 0.25 per cent for repowering projects in addition to all fiscal and financial benefits available to new wind projects.

The GOI has provided various tax and fiscal incentives to electricity generated from specific energy sources such as accelerated depreciation, etc. There are incentives available to renewable power projects at state level as well. Many of these states have specific policies for the source of energy (such as separate policies on wind and solar), which have high potential in a particular state. Through these policies, the state governments grant various fiscal incentives such as exemption of electricity duty, exemption from cross-subsidy surcharge, exemption from payment of stamp duties and land registration charges and exemption from transmission and distribution charges for wheeling of power. Certain states also provide procedural relaxations such as deemed non-agricultural status of the approved project land. In certain states, open access is given on priority basis or deemed to be given if the application for open access for renewable power projects is not granted within the time frame specified under the regulations. However, in view of the increased generation from renewable sources and the enhancement of technology, there seems to be a reversal in the trend, as it is now being argued that renewable projects can have parity with conventional sources of energy. For instance, in Tamil Nadu and Karnataka, transmission charges, cross-subsidy charges and other charges have been made applicable for new solar and wind energy projects.

The MNRE has issued various schemes and policies in 2018-19 such as, in August 2018, a project titled 'Scale up of Access to Clean Energy for Rural Productive Area' to provide clean energy for rural livelihoods and the reduction of greenhouse gas emissions in areas of Assam, Madhya Pradesh and Odisha. In February 2019, the MNRE issued Payment Security Mechanism Guidelines for VGF Schemes under NSM that stipulate the creation of a payment security mechanism fund of 5 billion rupees to cover delays in payments by the buying entities.

In June 2019, the GOI approved the proposal to make it mandatory for distribution licensees to open and maintain adequate letter of credit as payment security mechanism under power purchase agreements. Further, in relation to specific disputes of time extension, the MNRE, in June 2019, issued an order regarding the setting up of dispute resolution committee to resolve disputes related to:

- appeal against decisions given by SECI/NTPC on extension of time requests based on the contracts executed; and
- requests for extension of time not covered under such contracts.

**Are renewable energy policies and incentives generally established at the national level, or are they established by states or other political subdivisions?**

Renewable energy policies and incentives are established both at the national level and at the state level. See question 6.

*Legislative proposals*

**Describe any notable pending or anticipated legislative proposals regarding renewable energy in your jurisdiction.**

The Electricity (Amendment) Bill 2018 provides definitions of 'renewable energy' and 'renewable energy service company' that are not provided for in the Electricity Act. To promote the generation of electricity from renewable energy sources, the Electricity Amendment Bill requires coal (including lignite) thermal generating stations to set up a renewable energy station or procure energy from renewable energy sources, provides for imposition of penalty in case of non-compliance with the renewable purchase obligation, and envisages preparing of National Renewable Energy Policy. Also, the Union Budget for 2019-20 seeks to ensure power availability and connectivity through 'One Nation, One Grid' and removing barriers of cross-subsidy surcharges, undesirable duties on open access sales or captive generation for industrial and other bulk consumers. In addition to this, the Union Budget also envisages considerable structural and power sector tariff reforms.

The MNRE released a draft Renewable Energy Act in July 2015 for comments from various stakeholders. The draft proposes establishment of National Renewable Energy Committee and National Renewable Energy Advisory Group to ensure inter-ministerial coordination and expert assistance. The draft act also defines 'renewable energy sources' as energy derived from non-depleting sources.

Further, the MNRE released a draft Offshore Wind Energy Lease Rules in January 2019 providing a framework of allocation of wind energy blocks to successful bidders through international competitive bidding process. The draft covers installation, commissioning, prospecting of offshore wind energy under lease and also prescribes rights of the lessee and procedure for grant of lease.

*Disputes framework*

**Describe the legal framework applicable to disputes between renewable power market participants, related to pricing or otherwise.**

There are no separate bodies or framework for disputes relating to renewable energy in particular. Jurisdiction over interstate and intrastate electricity regulatory issues is exercised by the CERC and SERCs, respectively. The CERC has the power to adjudicate upon disputes involving generating companies (either owned or controlled by the GOI or that have entered into a composite scheme for generation and sale of electricity in more than one state) or transmission and trading licensees with respect to determination of tariff and regulation of inter-state transmission and trading of electricity. SERCs have the power to adjudicate on disputes between licensees and generating companies within their respective jurisdiction. Both the CERC and SERCs have the authority to refer disputes to arbitration. APTEL is the appellate body and possesses suo moto jurisdiction to examine the validity of any order made by the CERC or SERC. Decisions of APTEL may be challenged before the highest court, the Supreme Court of India. Also, in relation to specific disputes of time extension, in June 2019, the MNRE issued an order regarding setting up of dispute resolution committee to resolve disputes related to:

- appeal against decisions given by SECI/NTPC on extension of time requests based on the contracts executed; and
- requests for extension of time not covered under such contracts.

See question 6 as regards approval accorded to the proposal requiring distribution companies to open and maintain adequate letter of credit as payment security mechanism under power purchase agreements and the MNRE's guidelines stipulating creation of payment security mechanism fund to cover delays in payments by the buying entities.

**“The content of this document do not necessarily reflect the views / position of Khaitan & Co but remain solely those of the author(s). For any further queries or follow up please contact Khaitan & Co at [legalalerts@khaitanco.com](mailto:legalalerts@khaitanco.com)”**

**Khaitan & Co** - Dibyanshu, Prateek Bhandari and Shikha Rastogi

Powered by

**LEXOLOGY.**