



Prayas (Energy Group)

Initiatives in Health, Energy, Learning and Parenthood

Prayas

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20th April, 2017

To,
Shri J K Jethani,
MNRE, New Delhi

Subject: Comments/suggestions on the “MNRE draft guidelines for procurement of wind power through bidding”

Dear Sir,

Please find enclosed comments/suggestions by Prayas (Energy Group) on the above mentioned draft guidelines issued under section 63 of the E Act, 2003.

We request you to take our comments on record and allow us to make further submissions if necessary.

Yours sincerely,

Ashwin Gambhir and Shantanu Dixit

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Comments/Suggestions on the “MNRE draft guidelines for procurement of wind power through bidding”, by Prayas (Energy Group), Pune, 20th April, 2017.

To begin with, Prayas (Energy Group) appreciates the Ministry’s efforts in beginning the process for finalising competitive bidding guidelines for procurement of wind energy under section 63 of the Electricity Act, 2003. Prayas (Energy Group) has been consistently arguing in favour of competitive bidding based price discovery for wind power in India and the recent success in discovering a price of Rs 3.46/kWh under the first large scale wind bidding (1 GW) in India is testament to it.

With regard to the specific issues in the draft guidelines, our comments/suggestions are outlined below.

1. Section 3: Applicability of Guidelines

The guidelines should clearly specify that, after execution of the PPA, specific provisions in PPA shall prevail over the corresponding provisions in the bidding guidelines.

2. Section 4: Appropriate Commission

The Supreme Court has recently issued judgment in the matter of compensatory tariff claims by Adani Power and Tata Power-Mundra cases, wherein the issue of what constitutes ‘Composite Scheme’ has been clearly dealt with. The judgement makes it clear that,

“the expression “composite scheme” does not mean anything more than a scheme for generation and sale of electricity in more than one State”. (SC Order, page 29)

Hence, the provisions under the Competitive Guidelines (under section 4) need to be modified to reflect the said understanding, in line with the recent Judgment. Specifically, if the Generator and Procurer are in different states, then the Central Commission will be the Appropriate Commission.

3. Section 5.1 (a): Bid Documentation

The bidding guidelines propose a certain framework for bidding, though a lot of the important details to judge the bidding process are part of the PPA, which is as yet not made public. Hence all draft Standard Bidding Documents (**SBDs**) [consisting of Model Request for Selection (**Rfs**) Document, Model Power Purchase Agreement (**PPA**) and Model Power Sale Agreement (**PSA**)] along with the revised draft bidding guidelines should be quickly made public and public consultation on these should be conducted on the similar lines as is presently being done for the bidding guidelines. This is important to ensure harmonious reading of all documents and avoid any misinterpretation in any provisions.

4. Section 5.2 (a): Land Acquisition

The last line states that, *“Wherever leasing of private land is involved, the lease should allow transfer of land to the lenders or Procurer, in case of default of the Wind Power Generator”*. It would be better to reword this to clarify that, the lease should allow for transfer of the lease agreement on same terms to the lenders or procurers in case of default. Since land is leased there is no question of transfer of land per se.

5. Section 7.1: PPA Period

The last line states that, *“The Wind Power Generators are free to operate their plants after the expiry of the PPA period in case the arrangements with the land and infrastructure owning agencies, the relevant transmission*

utilities and system operators so provide". While this clause enables operation, it does not give any clarity on the pricing of this power beyond the PPA. Will the erstwhile procurer have first right of refusal or the generator have full freedom to pursue appropriate commercial arrangements? This clarity is needed since there is precedent to this issue in Maharashtra, which had 13 year wind PPAs, following which there was a lot of regulatory and legal uncertainty over sale of this power. In our view it would be appropriate to allow flexibility to the generator after the PPA.

6. Section 7.2: Capacity Utilisation Factor

With improved wind turbine technologies, new turbines being installed with 100-120 m hub height and similar rotor sizes, we believe that the minimum CUF should be set at 25% and not at 20%. This will also encourage the development of high wind resource sites to begin with. The bidding guidelines may also consider some additional weightage or preference criteria for sites where developers have quoted CUF>30%.

Similarly the minimum penalty level for under-performance should be increased to 50% instead of the present 25%. The guidelines could allow for a roughly 10% variation (range) over and below the benchmark CUF to take care of the yearly natural variation in wind resource.

7. Section 7.6: Generation Compensation for Off-take Constraints

Firstly, it is important to acknowledge the importance of this concept of compensation for generation due to off-take constraints. Renewable energy (wind and solar) have single part tariffs and near zero marginal costs, hence they are at a big loss due to loss of off-take. This is completely different for coal power plants which have two part tariffs and get their fixed cost paid as per schedule & availability, thereby completely taking care of their debt payments unlike the case for wind power.

Both, section 7.6.1 (compensation for grid unavailability) and 7.6.2 (compensation for backing down) propose a framework for compensation which is calculated on the basis of "**Average Generation per hour during the contract year**". Wind power is highly seasonal and hence average generation per hour in monsoon and non-monsoon months is extremely different from each other and from the annual average. In the proposed framework any loss of off-take in monsoon months would be disproportionately loss making for the wind generator while loss of off-take in non-monsoon months would be similar for the procurer.

Instead of an annual average generation per hour, one could have a more granular resolution of deemed generation in the hours when grid is unavailable or a wind generator is backed down. One of the easiest ways to do this going forward, is to simply rely on the schedule provided by the wind generator for the purpose of forecasting, scheduling and deviation settlement regulations which will be mandatory for all wind projects. However care should be taken that such a framework is not manipulated/gamed and loss of compensation payments over the year should not be so high as to exceed the maximum expected CUF as stated by the generator while bidding. Another possible way to calculate loss of generation is to rely on actual generation profiles from past years or a simulated generation profile for the first year.

The proposed framework states that this generation loss will be procured by the procurer at the PPA tariff over the succeeding three years. Alternatively it allows for generation compensation in the contract year beyond 50 hours of unavailability. In both cases, care should be taken so as to ensure that loss of compensation payments over the year should not be so high as to exceed the maximum expected CUF as stated by the generator while bidding.

On the issue of off-take constraints due to backing down, compensation would be allowed only in cases where backing down is not done for grid security or safety of any equipment or personnel or other such conditions. In the first place, as the guidelines themselves point out, due to the must-run status accorded to wind and solar, these plants should not be backed down. Secondly there is presently no way to differentiate backing down for grid security reasons and other reasons not related to security. Hence it would be very difficult to implement this provision in practice. Finally, generation compensation in case of backing down is only 50% of the PPA tariff. From the wind generators point of view, loss of generation, either due to grid unavailability or backing down, has the same impact in terms of loss of revenue and subsequently on debt repayments. Hence there should not be an arbitrary difference in generation compensation between grid unavailability and backing down.

Finally, going ahead in the medium term, the Ministry should bring out a discussion paper on the effectiveness of single part energy tariffs, especially when forecasting an scheduling will be the norm.

8. Section 7.7.2 (b): Procurer Event of Default and the consequences thereof

In the event of procurer default, the procurer has the option to, *“(ii) pay to the wind power generator, damages, equivalent to 6 (six) months, or balance PPA period whichever is less, of charges for its contracted capacity, with the project assets being retained by the wind power generator”*.

Such a provision is likely to make the project less bankable, because damages for 6 months are only 2% of the total payment likely to be paid by the procurer to the wind developer over a PPA period of 25 years. Essentially, this provision allows the procurer to default on the PPA with quite a minor penal payment. This is important to consider especially since most estimates show that wind prices are likely to come down in the future. If the procurer defaults on the PPA, there is a possibility that the wind developer may have to compete against much lower wind power rates in the market. Instead of having just a single option of 6 months damages, the guidelines could think of a graded approach on penalties linked to the debt. Essentially it could propose a slightly higher penalty (12 months damages) in the first few (say 1-5) years when debt repayments are higher. In the latter years, when debt payments are low, damages for PPA default in years, say 6-12, could be lower at 6 months damages.

9. Section 7.5 & 7.8: Force Majeure and Change in Law

To bring in abundant clarity with regard to these clauses, it would be better to detail out some of the issues which have a possibility of affecting wind power contracts. Firstly that ‘change in law’ should be applicable only to Indian laws. Secondly FOREX variation should be the sole responsibility of the bidder and would explicitly not be covered under change in law or force majeure.

10. Section 10.2: BID SUBMISSION AND EVALUATION

The guideline states that, *“The Procurer shall constitute committee for evaluation of the bids (Evaluation Committee), with at least three members, including at least one member with expertise in financial matters”*.

We strongly urge the Ministry to change this clause to include at least one independent member on the evaluation committee, while also ensuring that that member has no conflict of interest from either the procurer side or the bidder’s side. Clause 10.2 could be redrafted as, *“The Procurer shall constitute committee for*

evaluation of the bids (Evaluation Committee), with at least three members, including at least one member with expertise in financial matters and at least one independent member”.

11. Section 11.1: INDICATIVE TIME TABLE FOR BID PROCESS

Bid evaluation and issue of LOI time frame could be reduced from 90 days to 60 days, considering that bidders are only allowed 30 days to submit bids.

12. Section 12.4: CONTRACT AWARD AND CONCLUSION

Section 12.4 should clearly specify that Appropriate Regulatory Commission should make the bid evaluation committee report and the signed PPA public, along with their tariff adoption order.

13. Section 9.2.2 (a) (i) (Net Worth) & 13.1 Earnest Money Deposit

Both these clauses depend on CERC benchmark capital costs for wind power projects. However since 2017-18, CERC has stopped its erstwhile practice of notifying benchmark costs. Hence the above clauses need to be suitably modified.

14. Section 18: Transmission Connectivity

This section does not make it clear whether firm transmission connectivity is a pre-requisite for bidding. Adding it as a pre-requisite risks limiting the number of players while not having it as a pre-requisite risks winning bids not being completed due to potential unavailability of transmission connectivity. This is an important issue since the present CERC’s “Grant of Connectivity, Long-term Access and Medium-term Open Access in inter-State Transmission and related matters Regulations, 2009” allows transmission connectivity to amongst other players, “any company authorized by the central government as solar park developer”. However it is silent on the issue of wind developers. Hence this issue needs clarification.

Additionally it should also be made clear that since it is completely the developer’s responsibility to build and operate the dedicated transmission line from the generation plant to the inter-connection point, any loss of generation on account of unavailability of this transmission line will not attract any compensation payment.

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