22. संदाय में चूक - (1) इन नियमों के अधीन संदाय, यदि ऐसे संदाय के लिए विनिर्दिष्ट समय के भीतर संदत्त नहीं किया जाता है, तो आनुपातिक आधार पर प्रत्येक मास या मास के भाग के लिए पांच प्रतिशत की दर से वृद्धि की जाएगी, जिसके दौरान ऐसी फीस या अन्य संदाय नहीं किया जाता है।

(2) यदि किसी पट्टे के संबंध में कोई पट्टा फीस या अन्य संदाय तीन मास से अधिक समय से लंबित है, तो केंद्रीय सरकार ऐसे पट्टे को रद्द कर सकती है और यह रद्दकरण राजपत्र में इसके प्रकाशन की तारीख से प्रभावी होगा।

23.विवाद निपटान तंत्र - (1) यदि कोई विवाद उत्पन्न होता है, तो दोनों पक्षों द्वारा सौहार्दपूर्ण विवाद समाधान के प्रयास किए जाएंगे और नवीन एवं नवीकरणीय ऊर्जा मंत्रालय के सचिव की अध्यक्षता वाली एक समिति मध्यस्थता प्रक्रिया में जाने से पहले मामले पर विचार करेगी।

(2) यदि इन नियमों के अनुसार हस्ताक्षरित पट्टा करार के किसी भी उपबंध से संबंधित विवाद को सौहार्दपूर्ण ढंग से नहीं निपटाया जाता है, तो इसे मध्यस्थों को निर्दिष्ट किया जाएगा।

(3) तीन मध्यस्थ होंगे जिसमें से प्रत्येक पक्ष द्वारा एक-एक मध्यस्थ नियुक्त किया जाएगा और तीसरा मध्यस्थ दोनों नियुक्त मध्यस्थों द्वारा नियुक्त किया जाएगा।

(4) मध्यस्थता में प्रत्येक पक्ष अपना खर्च स्वयं वहन करेगा और मध्यस्थता अधिकरण के व्यय को विवाद से संबंधित पक्षों द्वारा साझा किया जाएगा जब तक कि अधिकरण द्वारा अन्यथा विनिश्चित न किया जाए।

(5) मध्यस्थता और सुलह अधिनियम, 1996 (1996 का 26) के उपबंध और तद्धीन बनाए गए नियम, उपनियम (2) के अधीन, इस नियम के अधीन मध्यस्थता कार्यवाहियों पर लागू होंगे।

[फा. सं. एल-III/16/2014]

उमा शेखर, अपर सचिव (विधि एवं संधि)

MINISTRY OF EXTERNAL AFFAIRS

NOTIFICATION

New Delhi, the 19th December, 2023

G.S.R. 901(E).—In exercise of the powers conferred by section 15 of the Territorial Waters, Continental Shelf, Exclusive Economic Zones and Other Maritime Zones Act, 1976 (80 of 1976), the Central Government hereby makes the following rules to regulate the grant of lease of offshore areas, namely:-

1. Short title and commencement. - (1) These rules may be called the Offshore Wind Energy Lease Rules, 2023.

(2) They shall come into force on the date of their publication in the Official Gazette.

2. Definitions. - (1) In these rules, unless the context otherwise requires:-

a) "Act" means the Territorial Waters, Continental Shelf, Exclusive Economic Zones and Other Maritime Zones Act, 1976 (80 of 1976);

b) "Agreement" means an agreement entered between the Central Government and Lessee;

c) "Central Government" means the Ministry of New and Renewable Energy **in the Government of India which administers these rules**;

d) "Decommission" means decommissioning of the wind turbines, machinery and used cables as well as uprooting and demolition of the foundation structures along with removal of the debris and returning the seabed to its original configuration in accordance with applicable law/international practices;

e) "Designated Agency" means the agency designated by the Central Government for bidding or monitoring the project;

f) "Designated Lease Areas" means designated portion of lease area where entry restriction can be applied for a notified period to carry out activities related to offshore wind energy project and offshore transmission project;

g) "Geophysical Survey" means the physical examination of the water column, sea bed and sub-soil, for spatial studies and preparation of geological maps and geological sections defining the seabed condition of different zones to help in designing the foundations structures for such offshore wind turbines for electrical power generations;

h) "Geotechnical survey" means the drilling of bore-holes to source scientific information and other data relating to soil and sub-soil conditions including assessment of its load bearing capacity with an objective to set up the offshore wind projects;

i) "Lease" means an agreement to grant rights over seabed within Exclusive Economic Zone to Lessee by the Central Government for a fixed term against payment of lease amount;

j) "Lessee" means a person or an entity who has been granted a lease;

k) "Lease Issuing Authority" means an authority designated by the Central Government for offshore wind energy project and offshore wind transmission project;

l) "National Institute of Wind Energy" is an autonomous institution under the administrative control of Ministry of New and Renewable Energy;

m) "Offshore Wind Energy Project" means a complete system consisting of wind turbines, offshore pooling sub-station, array of offshore cables including intra array cables and inter array, and power generating systems from other renewable sources utilised on offshore platforms to meet the auxiliary power needs within the Exclusive Economic Zones with fixed foundation or floating foundation to generate electrical power in natural sea environment;

n) "Offshore wind Transmission Project" means transmission power evacuation system from offshore pooling points to onshore pooling points for the purpose of Offshore Wind Energy Project;

o) "Wind turbine" means wind operated electricity generator that converts kinetic energy of wind into electrical energy;

(2) Words and expressions used herein and not defined but defined in the Act shall have the same meaning respectively as assigned to them in the Act.

3. Installation, Commissioning of offshore wind energy under a lease. - No person or entity shall install offshore wind energy projects or offshore transmission projects, except under a Lease granted under these rules.

4. Regulatory Mechanism. – The Central Government may utilise the services of the National Institute of Wind Energy, an autonomous body for matters related to wind energy.

5. Grant of lease.– (1) The Central Government may lease out offshore area within Exclusive Economic Zone for Offshore Wind Energy Project and Offshore Wind Transmission Project;

(i) the offshore area for the Lease shall be identified by the Central Government based on wind resource assessment followed by marine spatial planning.

(ii) the selection process of the Lessee shall be governed by National Offshore Wind Energy Policy;

(iii) clearances from the Ministry of Defence, Ministry of Home Affairs, Ministry of External Affairs, Ministry of Environment, Forest and Climate Change, Department of Space and Ministry of Ports, Shipping and Waterways shall be obtained before granting of the Lease;

(2) The Lessee shall enter into an agreement with Central Government for the grant of lease; and for setting up Wind Energy capacity according to the Guidelines issued by the Govt of India.

(3) Every lease shall contain such of the terms, covenants and conditions under these rules and additional terms, covenants and conditions that may be stipulated in the agreement between the Central Government and the Lessee and the details of lease shall be published in Official Gazette.

6. Right of the lessee. – (1) Subject to the terms and conditions of the agreement that may be arrived between the Central Government and the Lessee, after consultation with the State Government and other stakeholders, the rights of the Lessee within the lease area shall be as follows;

i. every lessee shall have the exclusive right to carry out activities related to offshore wind energy and offshore wind transmission including studies and surveys, for fulfilling obligations under the Lease;

ii. Right to use waterways for required work related to offshore wind or offshore transmission or both, as the case may be;

iii. every lessee shall have the right to restrict,-

a. the entry into the Designated Lease Areas for such period as notified by the Central Government for the purpose of construction or operation and maintenance of the offshore wind farm;

b. the navigation of boats, ferries and ships obstructing the operation of the project site;

c. movement within fifty meters distance from the wind turbine foundation and five hundred meters distance from the sub-station;

d. the anchoring or use of fixed fishing gears within the Designated Lease Areas as per 6 (iii)(a);

e. activities such as scuba diving, windsurfing, kiting and the like, within the Designated Lease Areas as per 6 (iii)(a):

Provided that activities such as fishing for the purpose of livelihood and other activities that may co-exist with the offshore wind energy farm in the interest of the common public shall be permissible, if they do not affect the normal working of the offshore wind energy farm.

Note: The Designated Lease Areas would vary for measurement and exploration activities, during the construction period and during the operation and maintenance period. The Designated Lease Areas shall be approved by the Central Government and the Lessee shall have to make wider circulation of the notification in three local newspapers and three national newspapers.

(2) The Lessee shall not have any right for exploration and extraction of minerals, materials and other resources from the sea bed, subsoil, super adjacent waters and any other activities except offshore wind power generation related works.

(3) The Lessee shall not sublease any part of the Lease, without the approval of the Central Government.

7. Date of effect of the lease. - Every Lease shall be effective from the date as specified in the lease agreement.

8. Area and term of the lease. – (1) The area covered by the Lease shall be specified and the Lease shall be valid for a period of three years for resource measurement and related study/survey activities, further extendable for adequate reasons by an additional two years. Post expiry of the five years period, the Lease shall expire; and all clearances to the Lessee shall be withdrawn and the Lessee shall have to deposit the study or survey data to National Institute of Wind Energy; unless the lessee has started work to set up wind energy capacity as per the terms of the Lease.

(2) For construction and operation of offshore wind energy project, the Lease shall be extended for thirty five years which can be extended further on case to case basis subject to functional viability and safety of the project.

(3) The area covered under a Lease, shall ordinarily be twenty-five square kilometres to five hundred square kilometres and the same may vary depending on the size of the project.

9. Security deposit, annual lease fee and shedding of areas etc.- (1) The applicant shall deposit the refundable security deposit to the Designated Agency before the Lease is granted by the Lease Issuing Authority within three months from the letter of demand to the Lessee;

i. for installation and commissioning of an offshore wind energy project , a sum of rupees one lakh per megawatt;

ii. for a separate offshore wind transmission project, a sum of rupees fifty thousand per megawatt;

iii. the security deposit will be returned to the Lessee after successful operation of the offshore wind energy project and decommissioning at the end of the lease agreement for:

Provided that the security deposit shall be returned after production of a certificate of proper decommissioning and adherence to terms and conditions of lease from Designated Agency.

(2) The applicant shall pay a yearly lease fee at a rate of rupees one lakh per square kilometre per year in advance, calculated for each square kilometre or part thereof covered by the lease. The fee is required to be deposited within one month from the letter of demand from the Lease Issuing Authority.

(3) The Lessee shall be allowed to relinquish the entire or partial lease area on giving thirty days prior notice to the Central government and paying the yearly lease fee for the next five years or up to the lease period whichever is earlier:

Provided that in case the entire proposed Project Capacity is commissioned in a partial lease area, the remaining partial lease area shall be relinquished on giving thirty days prior notice and paying the lease fee for the next thirty days or up to the lease period whichever is earlier.

Provided further that in case either full or partial capacity of the project cannot be installed due to *force majeure* or due to technical viability or due to regulatory clearances as accepted by the Central Government, the relevant lease area shall be relinquished on giving thirty days prior notice and paying the lease fee for the next thirty days or up to lease period, whichever is earlier.

(4) In case, the activity - related study or survey or offshore wind project is not commenced within six months from the effective date of Lease, the Central Government may cancel the Lease and forfeit the security deposit.

(5) No royalty shall be applicable for the development of offshore wind energy projects.

10. Identification of areas.- Within three months from the effective date of the lease, the Lessee shall display notices or floaters or signage or indicators at all conspicuous points on the area covered by the lease, so as to indicate its boundaries and shall, thereafter during the term of such lease, maintain such notices or floaters or signage or indicators subject to the satisfaction of the Central Government and other stakeholders including the State Governments, Coast Guard and Indian Navy.

11. Transfer or Assignment. - The Lessee shall not assign or transfer his right, title and interest in respect of the Lease or in respect of the area within the territorial waters or the continental shelf of India covered by such Lease, without the written consent of the Central Government.

12. Right of Pre-emption. - In the case of emergency due to natural disaster, civil unrest or external aggression, the Central Government shall have the right of pre-emption of the lease for power generation from such projects, during an emergency:

Provided that where the project has been commissioned and is generating, the lessee shall be paid the cost of power which could not be dispatched during the period of pre-emption.

13. General Provision. - The Lessee shall;

(i) maintain all equipment, infrastructure and wind turbines capable of producing power in good repair and conditions on the area covered by the lease;

(ii) execute all prospecting, installation, commissioning and operations of wind energy project with proper workmanship in accordance with the instructions, directions and orders that may be issued by the Central Government;

(iii) the Lessee shall have a local office in India to conduct all the operations and designate a nodal officer who shall be responsible for complying with all the terms and conditions of the Lease;

(iv) the Lessee shall insure the equipments, men and third parties during operations;

(v) the Lessee shall indemnify the Central Government or its assignee from any liabilities;

(vi) upon the termination of the lease or upon the relinquishment of any area covered by it, the Lessee shall furnish confidentially complete records of all the survey or investigation data such as meteorological, bathymetric, ocean current, sonar data, physical oceanographic data, surface geological maps and sections, magnetic and gravity measurements and anomaly maps, seismic profiles, sections and structure contour maps, electrical and telluric current survey data, and other information having direct or indirect bearing on the offshore wind energy possibilities in the area collected by the Lessee to the Central Government excluding the information covered under intellectual property rights of the Lessee. This data shall be shared with Integrated Head Quarter (Navy), Ministry of Defence;

(vii) the Lessee shall not be allowed to share data with any third party except in relation to executing the offshore wind energy project. Prior permission shall be taken from the Integrated Head Quarter (Navy) before sharing of any data;

(viii) the Lessee shall not be allowed to use the data related to offshore wind projects such as oceanographic, current, bathymetric and geology or wind profile for any other purpose, whatsoever after relinquishing the lease area;

(ix) the Lessee shall not be involved in any unsolicited or unauthorised activity which may be deemed illegal or against national interest, both within the offshore wind farm and in adjoining areas of land and water around such designated or demarcated offshore wind farms;

(x) no material shall be permitted to be dumped in the Maritime Zones, Continental Shelf, Territorial Water and Exclusive Economic Zone at the time of installation, during operation and on termination of the lease;

(xi) security of the wind farm is to be ensured through physical and electronic means by the Lessee and the security measures instituted shall be intimated to the Indian Navy through the Integrated Head Quarters (Navy);

(xii) requisite real-time surveillance information shall be shared with the Coast Guard, Navy and other agencies identified by the Central Government;

(xiii) the Central Government may authorise the Coast Guard, Navy and other identified agencies for fixing additional security surveillance system as deemed required;

(xiv) all movements of the personnel or material shall take place from the designated port and the same shall be cleared by the Port Security, Police and Customs;

(xv) relevant documents shall be produced for inspection by Indian Coast Guard on patrol in the area;

(xvi) the antecedents of all foreign nationals engaged shall be verified by the concerned security agencies of the Central Government;

(xvii) the survey must be confined to the areas for which permission or lease has been granted. It shall be ensured that no civil vital areas or vital points, identified or communicated to the Lessee, get affected during the course of survey and at the time of installation or operation of the project;

(xviii) the Lessee will have to ensure necessary precautions and measures for navigational safety including providing data for the issue of amendments in charts, obstruction lights, in accordance with extant rules.

14. Cancellation of lease. - (1) The lease shall be cancelled in case the Lessee at any point of time:-

(i) violates the terms and conditions of the lease or fails to fulfill or contravenes any of the terms or covenants or conditions contained therein; or

(ii) fails to use the area covered under lease for the purposes for which the lease was granted within the stipulated lease period ; or

(iii) uses such areas for purpose other than that for which it was granted; or

(iv) causes irreparable environmental damage to flora and fauna; or

(v) fails to produce requisite documents pertaining to the project.

(2) In case the failure/contravention is considered to be of remediable nature, the Central Government, may give notice to such Lessee, requiring him to ensure remedy within a specified period of time granted for the purpose from the date of receipt of the notice and convey that a penalty of forfeiture of whole or part of the security deposit may be imposed, if such remedial work not done within such period;

(i) in case the imposed penalty is higher than security deposit, the Lessee shall be liable to pay the difference;

(ii) the Central Government is satisfied that the failure, contravention in use on grounds mentioned above which cannot be remedied, on giving sixty days' notice to such Lessee and after considering representation, if any, made by him, it may order for forfeiture of the whole or any part of the security deposit made under sub-rule (1) of rule 9 of these rules and cancel the lease;

(iii) such cancellation shall be published in the Official Gazette and shall take effect from the date of such publication:

Provided that if it is established that the delay or the failure on the part of such lessee to fulfil any of the terms, covenants and conditions of the lease due to *force-majeure*, the period of such delay shall be excluded from the specified period of time granted for the purpose.

15. Spacing of Wind Energy Turbines and Off Shore Sub-stations. - The Central Government may issue instructions, depending on the requirements or as per prevailing international norms for:

i. the spacing of wind turbines;

ii. the spacing of offshore sub-stations; and

iii. least distance of wind turbines from boundary coordinates of the lease area.

16. Decommissioning. - (1) Lessee shall be required to decommission all installations and clear the seabed from all obstructions created by the project.

(2) Lessee shall have to complete the decommissioning within two years of termination of the lease and either reuse, recycle or responsibly dispose of all materials removed and the Central Government shall issue a separate guideline for the decommissioning of offshore wind project.

17. Delivery of premises upon termination of lease.- After termination of the lease under these rules, the Lessee shall handover the lease area to the Central Government;

(i) the Lessee within two years after the termination of the lease under these rules or within such further time as the Central Government may grant; remove or dispose off all the components of offshore wind energy project or offshore transmission project or both, as the case may be, such as wind turbines or its parts, equipment, machinery, cables, electrical infrastructures and civil infrastructures existing, during the lease period:

Provided that where the Lessee needs time extension for decommission, the Lessee may apply to the Central Government and the same may be granted or refused, as it may deem fit, for reasons to be recorded in writing.

(ii) if such stores, equipment, tools, machineries and other infrastructures are not so removed or disposed of, they may be sold by auction by order of the Central Government at the risk of the Lessee and the proceeds of such sale shall be held by the Central Government until applied for and obtained by the Lessee;

(iii) the entire cost in removal and disposal process shall be borne by the Lessee.

18. Regulation of operations. – The Lessee shall carry out the construction, installation, commissioning and operation and maintenance of the offshore wind energy project in accordance with the technical standards and instructions issued by the Central Government.

19. Suspension of operations. - No Lessee without prior approval of the Central Government shall:-

i. suspend normal power production from wind energy installations;

ii. suspend the export of power to the onshore pooling station;

iii. abandon the projects;

iv. re-power the offshore wind farm beyond sanctioned Project Capacity beyond a tolerance of five per cent ;

v. resume operation after a previous suspension without giving fifteen days prior notice to the Central Government:

Provided that if normal operations have to be suspended due to any unforeseen reason, notice thereof shall be given to the Central Government within twenty-four hours of such suspension.

20. Control of operations. - In case the lease area is used for activities causing threat to national security or irreparable damage to the environment, the Central Government, as it may appear to it, after giving notice to the Lessee shall,-

(i) assume control of the operation of offshore Wind Turbines in isolation or in groups or complete project within a particular zone;

(ii) appoint a such agency, as may be deemed necessary and authorise them to enter upon the premises, where wind turbines are installed and take over the possession of the zone.

21. Agency for supervision. – (1) The Central Government may nominate or constitute a suitable agency consisting of such number of persons as the Central Government may think fit:-

(i) for the purpose of ascertaining whether the provisions contained in these rules and any orders, instructions and directions issued thereunder have been or are being complied with by the Lessee and whether the prospecting or wind energy production operations are being carried in accordance with these rules;

(ii) to supervise the production including getting real-time data about performance, to ensure the optimal efficiency and delivery and submit report to the Central Government;

(iii) to carry out its functions under this rule, depute any person authorised by it on this behalf to enter into and inspect any place to monitor the operations and functional efficiency.

(2) The Indian Coast Guard is empowered to board, inspect, check documents at wind farm such as license, photo identification of the personnel, make copies as necessary and on suspicion detain personnel, seize material for further investigation or action as per applicable laws.

22. Default in Payment. - (1) Payments under these rules, if not paid within the time specified for such payment, shall be increased by the rate of five per cent, for each month or portion of a month on pro-rata basis during which such fees or other payments are not paid.

(2) If any lease fee or other payment due in respect of a lease is pending for more than three months, the Central Government may cancel such lease and the cancellation shall take effect from the date of its publication in the Official Gazette.

23. Dispute Settlement mechanism. - (1) In case any dispute arises, efforts for amicable dispute resolution shall be made by both the parties and a committee chaired by Secretary, Ministry of New and Renewable Energy shall consider the matter before going for arbitration process.

(2) In case a dispute relating to any provision of lease agreement signed as per these rules is not settled amicably, it shall be referred to arbitrators.

(3) There shall be three arbitrators, one to be appointed by each party and the third by the two appointed arbitrators.

(4) Each party shall bears its own expenses at the arbitration and Arbitral Tribunal expenses shall be shared by the parties to the dispute unless otherwise decided by the Tribunal.

(5) The provisions of the Arbitration and Conciliation Act, 1996 (26 of 1996) and the rules made thereunder, shall apply to the arbitration proceedings under this rule, subject to sub-rule (2).

[F. No. L-111/16/2014]

UMA SEKHAR, Addl. Secy. (L&T)

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