

**National Electric Power Regulatory Authority (Review of Power Purchase Agreements)
Regulations, 2017**

S.R.O._____. — In exercise of the powers conferred by Section 47 read with section 7 of the Regulation of Generation, Transmission and Distribution of Electric Power Act, 1997 (XL of 1997), the National Electric Power Regulatory Authority is pleased to make the following regulations, namely.—

1. **Short title, commencement**— (1) These regulations may be called National Electric Power Regulatory Authority (Review of Power Purchase Agreements) Regulations, 2017.

(2) These Regulations shall come into force at once.

2. **Definitions.**(1) In these regulations, unless there is anything repugnant in the subject or context.—

(a) “Act” means Regulation of Generation, Transmission and Distribution of Electric Power Act, 1997 (XL of 1997);

(b) “Applicable Document” means the rules and regulations issued in pursuance of the Act by the Authority, from time to time, relating to the generation, distribution and transmission licences, the grid and distribution codes and any documents, directions, instruments, determinations, approvals or authorizations issued or granted by the Authority in exercise of its power under the Act;

(c) “Applicant” means any party to the Power Purchase Agreement who submits the same to the Authority for review prior to its execution and, where context permits, shall include the Market Operator;

(d) “Authority” shall bear the meaning ascribed thereto in the Act

- (e) “Market Operator” shall bear the meaning ascribed thereto in the National Electric Power Regulatory Authority (Market Operator Registration, Standards and Procedure) Rules, 2015;
 - (f) “Power Purchase Agreement” or “PPA” means an agreement to procure electricity from a generation company and other ancillary agreements including but not limited to implementation agreement and energy purchase agreement;
 - (g) “Purchaser” means any distribution company or Market Operator purchasing electricity from a generation company through a Power Purchase Agreement;
 - (h) “Registrar” means the officer of the Authority appointed to perform the functions of the Registrar as laid down in these regulations;
 - (i) “Seller” means the generation company or any other person or entity selling electricity through a Power Purchase Agreement.
- (2) The words and expressions used but not defined in these regulations shall have the same meaning as assigned to them in the Act and rules and regulations made thereunder.

3. **Submission of Power Purchase Agreement.** (1) Every Power Purchase Agreement between Licensees directly or through the Market Operator as an agent, for procurement of electricity shall be submitted to the Authority for its *ex ante* review prior to its execution.

(2) The Applicant shall, after obtaining approval of the tariff in accordance with the provisions of NEPRA Tariff(Standards & Procedure) Rules, 1998 or through any other mode of approval of tariff, submit the negotiated Power Purchase Agreement covering base minimum provisions as specified in Schedule I to this Regulation, to the Registrar for review of the Authority:

Provided that a distribution company entering into a Power Purchase Agreement for procurement of electricity with a generation company pursuant to a Power Acquisition Programme approved by the Authority shall submit the same to the Registrar for review of the Authority after negotiating the Power Purchase Agreement bilaterally covering the base minimum provision specified in Schedule I, including the purchase price.

(3) The application for review of the negotiated Power Purchase Agreement shall be accompanied with –

(a) a signed statement from an authorized representative of the Purchaser, i.e. relevant distribution company or the Market Operator, as the case may be, indicating,–

(i) its ability to afford the proposed purchase under the existing consumer end tariff;

(ii) its current estimated revenue shortfall, if any, without the addition of the negotiated Power Purchase Agreement;

(b) information regarding risk allocation under the negotiated Power Purchase Agreement signed by the authorized representative of the Seller;

(c) affidavit as to accuracy and correctness of the information provided by the parties to the Power Purchase Agreement; and

(d) any other information or document as the Authority may require from time to time.

(4) The application shall be deemed to be filed only when all required information has been submitted by the Applicant and the Registrar may return the application if the required information has not been submitted.

(5) The Registrar shall present the application to the Authority for admission within seven (07) days of the date of filing of the Application complete in all respect.

(6) If satisfied that all the relevant and required information has been provided, the Authority may admit the application for further proceedings:

Provided that prior to admission of the Application, the Authority may seek any other information or document which, in the opinion of the Authority, is material and necessary for arriving at an informed decision.

4. **Review of the PPA.** (1) The Authority shall review the Power Purchase Agreement within thirty (30) days of the admission thereof and ensure that –

- (a) the Power Purchase Agreement is complete in all respects;
- (b) the rates, charges and other terms and conditions of the Power Purchase Agreement are in accordance with the tariff already approved by the Authority;
- (c) the proposed terms and conditions of the Power Purchase Agreement are prudent, reasonable, fair and balanced to all parties which will be directly or indirectly affected by its terms and conditions, including the consumers;
- (d) the combination of price and risk allocation is fair and efficient;
- (e) the Purchaser, i.e. Market Operator or the distribution company, has the ability to afford the electricity to be purchased with the revenues that it is likely to receive from its customers and, where applicable, from government provided subsidies or guarantees;
- (f) the Purchaser, i.e. Market Operator or the distribution company, where applicable, has the ability to fulfil payment obligations under the Power Purchase Agreement with the support of subsidies or guarantees;
- (g) the terms of the Power Purchase Agreement are consistent and in conformity with the Applicable Documents;
- (h) there is a correlation between price, performance and risk; and
- (i) the rights and obligations of the parties to the Power Purchase Agreement have been distributed fairly and evenly and no undue burden or obligations have been imposed on either of the parties.

(2) During the review process the Authority may require Applicants to submit any further information or clarification as the Authority may require.

(3) The Authority, after the review of the Power Purchase Agreement, shall convey its directions and observations to Applicant.

(4) In case the Power Purchase Agreement is in contravention, inconsistent or not in conformity with the Applicable Documents, the Authority shall, direct the Applicants to amend the Power Purchase Agreement accordingly.

(5) The Applicant shall amend the PPA as directed by the Authority under sub-regulation (4) above within thirty (30) days of the receipt of the direction thereof and submit copy of the amended PPA to the Registrar.

(6) The executed Power Purchase Agreement along with the observations and directions of the Authority shall be a public document and shall be placed on the official website of the Authority.

5. **Amendment of the PPA.** Any subsequent amendment to the Power Purchase Agreement shall be subject to the requirement of the review by the Authority prior to the execution of the amendment.

6. **Penalty.** (1) Any person who contravenes the provisions of the regulations or fails to comply with any direction of the Authority shall be liable to a fine as provided in the NEPRA (Fines) Rules, 2002.

(2) A Power Purchase Agreement executed in contravention of the directions of the Authority shall be void to the extent of the contravention and inconsistency.

7. **Repeal.** The National Electric Power Regulatory Authority Interim Power Procurement (Procedures and Standards) Regulations, 2005 hereby stands repealed.

Schedule I

[See Regulation 3(2)]

Base Minimum Clauses/Articles in a PPA

- (a) Description of Parties
- (b) Construction and specification of the generation facility
- (c) Statement regarding compliance with technical, performance, operational and environmental standards and regulations
- (d) Statement regarding compliance with the Grid Code
- (e) Control, operation and dispatch of the power plant and Maintenance Coordination
- (f) Interconnection arrangement
- (g) Fuel supply arrangements (if applicable)
- (h) Availability Commitments and Capacity Testing Procedure
- (i) Supply of and payment for Electricity
- (j) Fees, pricing and billing
- (k) Liability and Indemnification
- (l) Payment Guarantee (if any)
- (m) Insurance
- (n) Force majeure
- (o) Taxes
- (p) Liquidated Damages
- (q) Events of Default, termination and buyout
- (r) Assignment of rights, benefit and obligations
- (s) Dispute Resolution
- (t) Law jurisdiction and service of documents and notices
- (u) Representation and Warranties
- (v) Under performance by the power producer/Seller
- (w) Project operation - issues typically include scheduled outages and maintenance outages, operation and maintenance, emergencies and keeping of accounts and records.
- (x) Change of law

Schedules to be annexed to PPA

- (a) Specifications for Electricity
- (b) Plant Operating Parameters
- (c) Milestone Schedule
- (d) Guaranteed Completion Date
- (e) Compliance with Grid Code, Transmission Connection, Dispatch, Coordination and Scheduling, and Emergency Procedures
- (f) Description of Site
- (g) Delivery Point

- (h) Transmission Line Specifications
- (i) Electricity Delivery Procedures
- (j) Metering and Recording of Electricity, Collection and Validation Procedures
Calculation of Payment Capacity and Performance Testing Procedures
- (k) Guarantor Support Provisions
- (l) Seller and Purchaser Insurance Requirements
- (m) Governmental Approvals