

F. No. 283/56/2019-GRID SOLAR/Pt.

भारत सरकार / Government of India

नवीन और नवीकरणीय ऊर्जा मंत्रालय/ Ministry of New & Renewable Energy

ग्रिड सौर ऊर्जा प्रभाग / Grid Solar Power Division

Block No. 14, C.G.O. Complex,
Lodi Road, New Delhi – 110003

Dated: 07th June, 2023

ORDER

Sub: Setting up of a Dispute Resolution Mechanism to consider the unforeseen disputes between Renewable Energy Power Developers/ EPC Contractors and SECI/ NTPC/ NHPC/ SJVN/ any other Renewable Energy Implementing Agency (REIA), designated by MNRE, beyond contractual agreements – regarding.

1. The Ministry of New & Renewable Energy (MNRE), vide Order No. 283/124/2018-GRID SOLAR dated 18.06.2019 and the amendments/ Clarifications thereto dated 20.09.2019, 09.12.2019, 10.07.2020, 23.09.2020, 25.09.2020, and 08.12.2020 had set-up a Dispute Resolution Mechanism. Further, vide Order No. 283/124/2018-GRID SOLAR dated 18.06.2019, this Ministry had also issued procedural Guidelines for Dispute Resolution Mechanism.

2. In supersession to Orders/ Clarifications/Guidelines mentioned at para 1 above, the Dispute Resolution Mechanism (DRM) stands revised as follows. There shall be a transparent, unbiased Dispute Resolution Mechanism, consisting of an independent, transparent and unbiased Dispute Resolution Committee (DRC), for resolving the unforeseen disputes that may arise in implementation of contractual agreements and also for dealing with issues which are beyond the scope of Contractual Agreements between Renewable Energy (RE) Power Developers/ EPC Contractors and SECI/ NTPC/ NHPC/ SJVN/ any other Renewable Energy Implementing Agency (REIA), designated by MNRE.

[Note: Any further reference to 'REIA' shall mean SECI/ NTPC/ NHPC/ SJVN/ any other Renewable Energy Implementing Agency (REIA) designated by MNRE, unless the context specifies otherwise.]

3. The Government after careful examination of the issues involved, issues the following:

i. A three member Dispute Resolution Committee (DRC) will be set up, with the approval of Hon'ble Minister (NRE), consisting of eminent persons of impeccable integrity. The upper age limit for the DRC Members shall be 70 years. The Committee Members of DRC shall be chosen from the eminent persons, located in NCR of Delhi so as to avoid expenditure on Air Travel & accommodation. The selection of DRC Members would be made in such a manner that there is no conflict of interest involved.

ii. (a) The mechanism of Dispute Resolution Committee (DRC) will be applicable for all RE Schemes/ Programmes/ Projects being implemented through/ by REIA.

(b) This mechanism shall also be applicable for contractual agreements between REIA and the EPC Contractor, executing RE Power Project owned by REIA, provided REIA undertakes to abide by the decision coming out of this mechanism.



(c) In case of all disputes, whether covered by PPA / EPC Contract/ Agreement or not, the application shall have to be made first to the REIA. REIA would pass speaking orders on such requests, with the objective being to give a just solution to the RE Power Developers/ EPC Contractors with a sense of justice and fair play, even in situations not covered by PPA / EPC Contract/ Agreement, so that the aim for setting up of renewable projects are achieved. If the applicant party is not satisfied with the orders of REIA, then it can appeal to the DRC.

iii. The DRC will consider all kinds of cases of appeal against the decisions given by the REIA on disputes, as follows:

(a). All requests for extension of time due to recognized 'Force Majeure' events like flood, earthquake, delay in handing over of land by Solar Park Developers, delay in connectivity, etc. will be dealt strictly as per Contractual Agreements, where applicable. In all such cases, the RE Power Developers/ EPC Contractors shall make an application to the REIA for grant of Extension of Time (EoT), within the time specified in the Contractual Agreement. If there is no such time limit prescribed in the PPA/ Contractual Agreement for making such an application, then the application must be made within seven days of the cause of dispute taking place on the first occasion. If the application is not made within the time limit prescribed, it shall be summarily rejected by the REIA. If the application is made within the time limit, the request will be examined and the final decision given to RE Power Developers/ EPC Contractors, within twenty-one (21) days by the REIA from the date of application. No separate extension of time shall be granted for overlapping periods of effect as a result of two or more causes. If the RE Power Developers/ EPC Contractors is not satisfied with the decision of the REIA, then it may appeal to the Dispute Resolution Committee (DRC), within 21 days of REIA's Order.

(b). All requests for Extension of Time not covered under the terms of the contract: All cases involving unforeseen issues/ circumstances not covered under Contractual Agreements like cases where the site is to be procured by the Developer/ EPC Contractor but there is a delay in land allotment due to policy change or registration by the Government, delays in grant of proposed connectivity due to stay Orders of Hon'ble Court, etc., will be placed before the REIA, within seven days of the issue/ circumstance arising on the first occasion. The final decision shall be given to RE Power Developers/ EPC Contractors within twenty-one (21) days by the REIA from the date of application. No separate extension of time shall be granted for overlapping periods of effect as a result of two or more causes. If the RE Power Developers/ EPC Contractors is not satisfied with the decision of the REIA, then it may appeal to the Dispute Resolution Committee (DRC), within 21 days of REIA's Order.

(c). All disputes other than those pertaining to 'Extension of Time' between REIA and RE Power Developers/ EPC Contractors: All other disputes, apart from those pertaining to Extension of Time shall also be dealt as detailed at (b) above.

(d). All applications before the DRC under parts (a), (b) and (c) above shall be accompanied with the applicable fee as detailed below:

(i). In case of Extension of Time dispute, the fee payable shall be 1% (one percent) of the impact of REIA's decision being challenged, with the impact being

limited to the Performance Bank Guarantee (PBG) submitted for the project concerned, and which in no case be less than Rs. 1,00,000/- (Rupees One lakh) and not more than Rs. 50,00,000/- (Rupees Fifty lakh).

(II). Disputes not coming under the head, Extension of Time, in case there is a PBG covering the dispute, then the fee shall be same as in (I) above.

(III). In case of disputes not coming under Extension of Time, in case there is no PBG covering the dispute, then the fee shall be 1% (one percent) of the total impact of the dispute, which in no case be less than Rs. 1,00,000/- (Rupees One lakh) and not more than Rs. 50,00,000/- (Rupees Fifty lakh).

(IV). In cases where the RE Power Developers/ EPC Contractors have disputes with the REIA but have paid the financial penalties/ Liquidated Damages (LD) to the REIA, which is in excess of the applicable DRC fees, such RE Power Developers/ EPC Contractors should be exempted from payment of application fee for processing their appeal before the DRC, provided an undertaking is submitted by such RE Power Developers/ EPC Contractors to make payment in case of rejection of their Appeal by the DRC. However, in such cases, RE Power Developers/ EPC Contractors, shall make payment towards the fee, etc to be paid to DRC Members in respect of these cases.

(e). In case, the Government upholds the appeal in toto, after taking into consideration the recommendations of the DRC, and strikes down the REIA's order, then the fee so collected shall be refunded after deducting the fee, etc to be paid to DRC Members, provided the DRC makes a recommendation for the same and the Government passes a specific order to that effect. If the number of days of time extension, allowed by the Government after taking into consideration the DRC's recommendations, is less than the number of days of time extension claimed by the RE Power Developers/ EPC Contractors, the refund of fee shall be in proportion to the number of days allowed, viz-a-viz the total number of days claimed by the RE Power Developers/ EPC Contractors.

Example:

Suppose there is a single case which is decided by the DRC in total 3 hearings over the period of 20 days. In this case,

- *Applicable Fee paid by the applicant: Rs. 15,00,000/- (assumed)*
- *Fees etc. paid to the DRC members: = Rs 4,90,000/-*
- *Balance amount after deducting fees etc. paid to the DRC Members: [(Rs. 15,00,000) – (Rs. 4,90,000)] = Rs. 10,10,000/-*
- *No. of days of time extension claimed by RE Power Developers/ EPC Contractors: 100 days*
- *No. of days of time extension recommended by the DRC and agreed by the Government: 60 days*
- *Fee which may be refunded = [(Rs. 10,10,000 x 60)÷(100)] = Rs. 6,06,000/-*



The Fee which may be received and is not required to be refunded, shall be credited to the appropriate Payment Security Fund after deducting the fee, etc. to be paid to the DRC Members, being maintained by the REIA.

(f). In cases wherein the RE Power Developer/ EPC Contractor withdraws their application before any hearing of the DRC is held and requests for refund of application fees, the entire application fees shall be refunded, without interest.

- iv. The 'Dispute Resolution Committee' (DRC) will examine all such cases referred to it, including the cases where the RE Power Developer/ EPC Contractor is not satisfied with the decision of the REIA and it decides to Appeal after paying the required fee, in a time bound manner and submit its recommendations to the Ministry of New & Renewable Energy (MNRE), not later than twenty-one (21) days from the date of reference.
- v. The recommendations of the 'Dispute Resolution Committee' (DRC) along with MNRE's observations will be placed before Hon'ble Minister of NRE for a final decision. The Ministry shall examine and put up such recommendations to Hon'ble Minister of NRE with the comments of IFD, within twenty one (21) days of receipt of recommendations from the DRC.
- vi. The DRC member shall be entitled to payment as follows:
 - (a) A monthly remuneration of Rs. 1,00,000; and
 - (b) Rs 20,000/- per sitting for each case, subject to payment for not more than 5 sittings for each case.

Cases involving similar issues will be treated as one case.

- vii. The payment of fee, etc. to the DRC Members shall be made out of the funds collected through application fee received from the applicant. However, in case the fee collected and available after taking into account eligible refunds, if any, is insufficient for making payment of fee, etc to the DRC Members, then the deficiency would have to be made up by the REIAs, who will contribute for the same in equal proportion. However, the payment of fees to the Members of the DRC and responsibility for meeting the expenses thereof shall be of REIAs in equal proportion - whether the fee is collected or not. SECI will be the Nodal Agency for collecting requisite amounts from all REIAs and making payment of fees mentioned at para 3 (vi) above to the DRC Members as well as for other miscellaneous expenditure related to DRM/ DRC. If cases mentioned at Para 4 below (i.e cases between entities under State Governments/ UT Govts. / Administration and RE Power Developers) is taken up in the DRC, the sitting fee (mentioned at para 3 vi (b) above) and related expenditure in such cases shall be borne by the concerned State Agency.
- viii. The Meetings of the DRC shall be organized in the premises of the Ministry of New and Renewable Energy. All arrangements for the DRC Meeting shall be made by the REIA.
- ix. The DRC Members shall be provided transportation by SECI from their place of residence to the venue of the meeting and back.



- x. To arrive at any decision, the Committee will be free to interact with the relevant parties of the case and shall record their views. For presenting the case before the DRC, no lawyers shall be permitted.
 - xi. The Dispute Resolution Committee shall be permitted to hold meetings with a minimum of two (02) members.
 - xii. Procedural Guidelines for Dispute Resolution Mechanism are detailed at Annexure-I.
4. This Dispute Resolution Mechanism and the modalities mentioned at para 3 above shall also be applicable for the PPAs between entities under State Governments/ UT Govts. / Administration and RE Power Developers, provided the concerned State/UT Government/ entity, undertake to incur the sitting fee of the DRC Members and associated expenditure in respect of these cases before the DRC and also abide by the decision coming out of this mechanism.
5. This issues with approval of Hon'ble Minister of Power & NRE.



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To:

1. **The Managing Director, Solar Energy Corporation of India (SECI), Plate-B, 6th Floor, Tower 2, NBCC Office Block, East Kidwai Nagar, New Delhi-110023**
2. **The Chairman & Managing Director, NTPC Ltd., NTPC Bhawan, Scope Complex, 7, Institutional Area, Lodhi Road, New Delhi.**
3. **The Chairman & Managing Director, NHPC Ltd., NHPC Office Complex, Sector-33, Faridabad, Haryana**
4. **The Chairman & Managing Director, SJVN Ltd., Shakti Sadan, Shanan, Shimla, Himachal Pradesh**

Copy for internal circulation to:

1. PS to Hon'ble Minister of Power & NRE.
2. PS to Hon'ble MoS (NRE)
3. PSO to Secretary, MNRE
4. All Joint Secretaries/ JS&FA/ All Scientist-G/ All Group Heads
5. All Division Heads
6. DS (IFD)/ US (IFD)
7. NIC, MNRE, for uploading on MNRE Website

Procedural Guidelines for Dispute Resolution Mechanism to consider the unforeseen disputes between Renewable Energy Power Developers/ EPC Contractors and SECI/ NTPC/ NHPC/ SJVN/ any other Renewable Energy Implementing Agency (REIA) designated by MNRE, beyond contractual agreements

1. Meetings of Dispute Resolution Committee (DRC) shall be organized in the premises of the Ministry of New and Renewable Energy. However, the REIA will provide Secretarial assistance for the DRC, with its head being designated as Secretary (DRC/SECI), Secretary (DRC/NTPC), Secretary (DRC/NHPC), Secretary (DRC/SJVN) or Secretary (DRC/other REIA), as the case may be. The REIA will make available one officer each, not below the rank of General Manager, who shall function as the Secretary of the Dispute Resolution Committee. All the applications under the DRM, whether for Appeal against the decisions given by the REIA based on the terms of the contract or the requests not covering under the terms of the contract, shall be addressed to the Secretary of the DRC. The names and contact addresses of Secretaries shall be prominently displayed on the respective websites of the REIA. REIA shall also provide adequate support to the DRC Secretariat, in terms of supporting staff, IT support and other amenities, for processing the applications.
2. All applications shall be addressed to the Secretary (DRC) at REIA, with a copy sent to MNRE's Division dealing with the DRM.
3. All applications received in a particular week, whether Appeal or otherwise, should be placed before the DRC as soon as possible, in the following week, in consultation with the Members of the DRC by the respective Secretaries (DRC) of the REIA.
4. The Secretaries (DRC) would club all the applications of similar nature, involving similar issues, before placing the same before the DRC.
5. The DRC, at the first instance, would come to a finding on whether the case is covered under the scope of work prescribed in Dispute Resolution Mechanism (DRM)/ Dispute Resolution Committee (DRC) Order issued by MNRE. If the case does not fall under the scope or if the applicant has come directly to the DRC, without first taking recourse to the REIA, the application would be summarily rejected.
6. The Fee would be payable in all cases as per the DRM/ DRC Order issued by MNRE. If the fee is not paid, then the Secretary (DRC) shall return the application with a request to the applicant to submit the requisite fee.
7. In cases, involving clubbed applications requiring payment of mandatory fee, any default in payment of fee by one party will only render that application to be rejected and the outcome of DRC's decision on the main case will not have any bearing on this defaulting applicant.
8. After the application is brought before it, the DRC shall hold hearings on the subject and submit its recommendations to MNRE, not later than 21 days of such a reference. Since a number of applications may be received on similar issues in a particular week, for the



purpose of these Guidelines and the DRM Order, the date of reference shall be the date of first hearing on the application(s).

9. The DRC shall meet at least once every week, provided there are cases/ applications pending before it for resolution. The Secretary (DRC) of the REIA would ensure that the Meetings of DRC are convened in a manner and frequency that can ensure adherence to 21 days period kept for decision on a case.
10. In cases, where the DRC is unable to give their decision within the time frame of 21 days, the Secretary (DRC) appointed by the REIA shall inform MNRE in this regard and MNRE may provide an additional 14 days' time, within which the DRC will have to take a decision.
11. The DRC will be free to interact with relevant parties of the case and shall record their views. No lawyers shall be permitted for presenting the case before the DRC. The REIA would also be permitted to present their views/ arguments on the pleas made by the applicant. If required, the DRC may interact with MNRE, in which case, the MNRE's Division dealing with the DRM shall act as Ministry's nodal point.
12. Since the DRM/ DRC Order issued by MNRE, in Para 3, allows the RE Power Developers/ EPC Contractors to appeal to the DRC against the REIA's Order within 21 days of REIA's Order, any adverse financial impact coming on the RE Power Developers/ EPC Contractors in pursuance of such an Order by the REIA should be put in abeyance for 21 days subsequent to the issuance of such an Order. In case an Appeal is not filed within the said period of 21 days, or the Appeal is rejected for want of requisite fee, action as appropriate can be taken by the REIA. Further, no coercive action shall be taken on cases brought before the DRC, till the final disposal of the Appeal by the DRC and MNRE, where applicable.
13. The DRM has been set up to facilitate the resolution of disputes in the RE sector, between the REIA and the RE Power Developers/ EPC Contractors. As the DRM will help in furtherance of REIA's role as intermediary procurer by enhancing the investors' confidence, all expenses coming out of the DRM/DRC Order or these Guidelines, except for the amount of fee, etc paid to the DRC Members out of the unreturned application fee of the applicant but including the other expenses related to the DRC and the Secretariat thereof, shall be borne by the REIA and no recourse to any Payment Security Fund, if any, shall be made in this regard.
14. For cases covered under Para 4 (i.e cases between entities under State Governments/ UT Govts. / Administration and RE Power Developers) of DRM/DRC Order issued by MNRE, Secretary (DRC), SECI will be the Nodal Agency.

