

DRAFT April 3, 2014

THE REPUBLIC OF NAMIBIA  
RENEWABLE ENERGY FEED-IN TARIFF RULES

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**WHEREAS** the Government of the Republic of Namibia wishes to ensure a secure supply of power to meet internal demand, based on the utilization of conventional and renewable energy resources, support the technological development of the new and renewable energy subsector and foster private sector investment in Grid-connected renewable energy resources through the creation of targeted incentives, including fiscal and other measures;

**WHEREAS** the Government of the Republic of Namibia continues to support and expand the utilization of renewable energy resources to provide access to modern energy supplies in remote areas not served by the Grid;

**WHEREAS** the Government of the Republic of Namibia has articulated objectives for the power sector within the context of the White Paper on Energy Policy, 1998, the Electricity Act, 2007 (Act No. 4 of 2007);

**WHEREAS** the Electricity Control Board has invited all stakeholders to review and submit their comments on the proposed Rules as well as the associated PPA Guidelines and Application Procedures;

**NOW THEREFORE**, in accordance with \_\_\_\_\_ through the powers vested in \_\_\_\_\_ the Electricity Control Board hereby proclaims, as follows:

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## PART I – DEFINITIONS

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1.1 In order to facilitate the understanding of the REFIT Rules described herein, the following capitalized terms shall have the meaning provided below and any reference to the singular includes the plural and vice versa:

**“Base Cost”** means the capital costs associated with conceiving, designing, planning and implementing through engineering, procurement and construction a Plant up to the Best Utility Industry Practice standards, including but not limited to equipment, materials, civil works, development costs, pre-operating costs and associated import duties and taxes.

**“Best Utility Industry Practices”** means the practices, methods, and acts that, at a particular time, in the exercise of reasonable judgment, in light of the facts known or that should reasonably have been known at the time a decision was made, would have been expected to accomplish the desired result in a manner consistent with the laws, regulations, codes, standards, equipment manufacturers’ recommendations, reliability, safety, environmental protection, economy, and expedition in the Republic of Namibia.

**“Bid Exchange Rate”** means the US\$/NAD offered exchange rate prevailing at the close of business by the Bank of Namibia.

**“Biomass”** means a Plant whose Resource Base is biomass power and whose Installed Capacity is between 500kW and 5MW.

**“Buyer”** means the Offtaker.

**“Commercial Operation”** means operation of the Plant once it is ready for regular, daily operation, has been connected to the Grid in accordance with and in compliance with the Connection Agreement, and capable of producing the Energy Output envisaged for the Project, as established by the conclusion of performance tests and certified by an independent engineer, in accordance with Best Utility Industry Practice, in compliance with the PPA.

**“Completion Date”** means the date when a Plant has achieved Commercial Operation and the Conditions Precedent to the effectiveness of the parties’ obligations under the PPA have been satisfied.

**“Concession Agreement”** means the Implementation Agreement.

**“Conditions Precedent”** means all the conditions that need to be satisfied by the parties to an agreement for it to become effective.

**“Deemed Energy Output”** for a given Plant that has reached Completion Date means the amount of electrical energy that would have been generated by such a Plant and would have

been delivered at the Point of Delivery, but cannot be thus delivered due to system operational requirements, disruptions, breakdowns, electrical system failures, mechanical failures, or unscheduled repairs, that are not a direct or indirect consequence of the Seller's negligence or breach or are not the result of force majeure.

**"Distribution Network"** means a network owned and operated by a distributor other than NamPower.

**"ECB"** means the Electricity Control Board of Namibia, which is a statutory regulatory authority, established in 2000 under the Electricity Act, 2 of 2000, which has subsequently been repealed by the Electricity Act, 4 of 2007, the latter Act having expanded the ECB mandate and core responsibilities.

**"Energy Charge"** means the amount payable on delivered energy on a per kWh basis.

**"Energy Output"** means the amount of electrical energy generated by a Plant in Commercial Operation and delivered at Point of Delivery as measured by metering devices, except for energy delivered for testing purposes, as agreed by the parties to the PPA.

**"Environmental Impact Assessment"** means the due diligence study assessing environmental and social impact of a given project, with a scope of work that is responsive to the requirements stipulated by the competent authorities for environmental compliance in the Republic of Namibia.

**"EPC Contract"** means the contract entered into between the developer of the Plant and a contractor for the engineering, procurement and construction of the Plant.

**"Event of Default"** means an event as defined in the PPA that confers a contractual right upon the non-defaulting party to terminate the PPA, unless cured in accordance with the provisions of the PPA.

**"Expression of Interest (or EOI)"** means the formal expression of interest to be submitted to the RE IPP Committee as described herein.

**"Feasibility Study"** means a study or a collection of studies which collectively establish a project as a Viable Project.

**"Firm Energy"** means that portion of the Installed Capacity intended to be available at all times within a specified period of the PPA and subject to penalties in case of non-delivery.

**"Grid or National Grid"** means the national electric transmission system of Namibia owned and operated by NamPower.

**"Implementation Agreement"** means the project-specific agreement between the Seller and the Government of Namibia, through its designated authority, that outlines the rights and

obligations of Seller and the Government with regards to the guarantees, assurances, and support necessary for the successful development of a project to produce and sell electricity.

**“Independent Power Producer (or IPP)”** means the legal entity that is organized to own and either directly or indirectly or through subcontracting or leasing operate and maintain the Plant for the purpose of generating electricity.

**“Installed Capacity”** means the installed electricity producing capacity of a given Plant to reach and maintain within the tolerance margins agreed by the parties to the associated PPA, as certified for declaration of Completion Date by an independent certified engineer according to the provisions of the same PPA.

**“Interest during Construction”** means the interest estimated on the drawn down debt portion of the Total Financing Required for a Plant project which is due and payable prior to the Plant going into operation, plus the associated front-end-fees in generating that debt, plus the commitment fees payable on the undrawn portion of the debt.

**“kW”** means kilowatt.

**“kWh”** means kilowatt hours.

**“MW”** means one thousand kW.

**“NamPower”** means Namibia Power Corporation (Pty) Ltd, the national power utility of the Republic of Namibia and specializing in generation, energy trading, and transmission of electricity.

**“New Project”** means a project involving the construction of a Plant for which its IPP has not yet entered into a PPA with the Offtaker.

**“Non-Firm Energy”** means that portion of Installed Capacity that shall be delivered on an as available basis.

**“Offtaker”** means NamPower.

**“Old Project”** means a project involving the construction of a Plant for which its IPP has entered into a PPA with the Offtaker.

**“Physical Contingency”** means the contingency provisions that need to be made over and beyond the Base Costs of a Plant to cover the unforeseen components or expenses in the design planning and implementation of the Plant.

**“Plant”** means the plant, including all the equipment, civil works and auxiliary facilities and electrical lines necessary to generate the contracted electricity and deliver it to the Point of Delivery, all owned, operated and maintained by the Seller under the PPA associated with such plant.

**“Point of Delivery”** means the point at which the Seller makes the Energy Output available to the Offtaker.

**“Power Purchase Agreement (or PPA)”** means the agreement, as amended from time to time, entered into by the Offtaker as Buyer and an IPP as Seller in accordance with the provisions of these Rules.

**“PPA Guidelines”** means the guidelines described herein.

**“Price Contingencies”** means the contingency provisions that need to be made over and beyond the Base Costs and Physical Contingency assumptions to account for inflation during the procurement and construction of the Plant.

**“Producer Price Index (or PPI)”** means the US\$ average change in prices received by domestic producers for their output and posted in [...].

**“RE IPP Committee”** means the committee comprising representatives of the Ministry of Mines and Energy (MME), NamPower, ECB, REEEI, and other entities as deemed necessary, and chaired by the [*designated authority*], to evaluate the applicants’ expression of interest and pre-feasibility of an RE project.

**“Regulator”** means ECB.

**“Renewable Energy Feed-In Tariff”** means the tariff provided for renewable energy projects with an Installed Capacity between 500kW and 5MW as described herein.

**“Resource Base”** means any one of the natural energy resources which constitutes fuel for a Plant, including Solar, Biomass and Wind.

**“Seller”** means the IPP that enters into a PPA with the Offtaker in order to generate and sell the Energy Output as contracted under the PPA.

**“Shareholders’ Agreement”** means the agreement entered into by the shareholders of an SPV which provides the voting arrangements and rights and obligations of shareholders in relation to each other.”

**“Special Purpose Vehicle (or SPV)”** means a legal entity established by the IPP and duly incorporated under the laws of Namibia to build, own, and operate a Solar, Wind, or Biomass project.

**“Solar”** means a Plant whose Resource Base is solar power and whose Installed Capacity is between 500kW and 5MW.

**“System Operator”** means NamPower in its capacity as owner and operator of the Grid.

**“Total Financing Required”** means the total capital needed in the form of debt or equity (or grants) to meet the capital costs required to build and deliver a Plant to agreed and ordinarily accepted standards, including but not limited to Base Costs, Physical Contingencies, Price Contingencies, Working Capital plus Interest During Construction.

**“Connection Agreement”** means the agreement entered into between the Seller and Buyer which contains the rights and obligations of the parties with respect to the connection of the Plant to the National Grid or Distribution Network and the methods and procedures for the safe operation and maintenance of the Project in accordance with directives of the System Operator.

**“Viable Project”** means a project involving the construction of a Plant which in its conception, design, planning and execution meets the Best Utility Industry Practice(s) in each of the disciplines involved that will render such project feasible with respect to technical, commercial, financial, economic, environmental, regulatory, legal and other relevant criteria.

**“Wind”** means a Plant whose Resource Base is wind power and whose Installed Capacity is between 500kW and 5MW.

**“Working Capital”** means the current assets less current liabilities deemed necessary in the ordinary operation and maintenance of the Plant.

**Comment [TI1]:** This creates a conflict of interest for NamPower between its take-or-pay obligation under a PPA and its unilateral powers to stop offtake under such PPA as a System Operator.

This is a reality that has to be faced until such time that NamPower is unbundled and an “honest broker” ISMO is created as planner, dispatcher, single buyer, and network owner. This also, in itself, would be an interim solution for an end state that subsequently evolves to a Wholesale Market with competition.

On the other hand, rejecting the REFIT Program because there is such a conflict of interest would be self-defeatist making “perfect the enemy of good”. The Program has adequate checks and balances under the Grid Code and under acceptable Best Utility Industry Practices in the event of emergencies to keep NamPower’s Offtaker and System Operator roles separate and enforce, under transparent criteria, the Offtaker’s take-or-pay obligations.

**PART II – FEED IN TARIFFS**

2.1 The REFITs shall be as follows:

2.1.1 The REFITs for electricity generated by **Biomass** shall be\*:

- a. **2.04 (18.8 US cents)** NAD/kWh for plants with an Installed Capacity of **500kW**
- b. **1.97 (18.1 US cents)** NAD/kWh for plants with an Installed Capacity of **750kW**
- c. **1.90 (17.4 US cents)** NAD/kWh for plants with an Installed Capacity of **1MW**
- d. **1.61 (14.8 US cents)** NAD/kWh for plants with an Installed Capacity of **2MW**
- e. **1.37 (12.6 US cents)** NAD/kWh for plants with an Installed Capacity of **3MW**
- f. **1.30 (12.0 US cents)** NAD/kWh for plants with an Installed Capacity of **4MW**
- g. **1.23 (11.3 US cents)** NAD/kWh for plants with an Installed Capacity of **5MW**

2.1.2 The REFITs for electricity generated by Solar shall be\*:

- a. **3.13 (28.8 US cents)** NAD/kWh for plants with an Installed Capacity of **500kW**
- b. **3.10 (28.4 US cents)** NAD/kWh for plants with an Installed Capacity of **750kW**
- c. **3.06 (28.1 US cents)** NAD/kWh for plants with an Installed Capacity of **1MW**
- d. **2.86 (26.2 US cents)** NAD/kWh for plants with an Installed Capacity of **2MW**
- e. **2.65 (24.3 US cents)** NAD/kWh for plants with an Installed Capacity of **3MW**
- f. **2.51 (23.1 US cents)** NAD/kWh for plants with an Installed Capacity of **4MW**
- g. **2.46 (22.6 US cents)** NAD/kWh for plants with an Installed Capacity of **5MW**

2.1.3 The REFITs for electricity generated by Wind shall be\*:

- a. **1.85 (17.0 US cents)** NAD/kWh for plants with an Installed Capacity of **500kW**
- b. **1.69 (15.5 US cents)** NAD/kWh for plants with an Installed Capacity of **750kW**
- c. **1.54 (14.1 US cents)** NAD/kWh for plants with an Installed Capacity of **1MW**
- d. **1.36 (12.5 US cents)** NAD/kWh for plants with an Installed Capacity of **2MW**
- e. **1.26 (11.5 US cents)** NAD/kWh for plants with an Installed Capacity of **3MW**
- f. **1.19 (10.9 US cents)** NAD/kWh for plants with an Installed Capacity of **4MW**
- g. **1.16 (10.6 US cents)** NAD/kWh for plants with an Installed Capacity of **5MW**

\*These figures are based on a NAD/ 10.90/US\$ exchange rate and should be changed daily.

**Comment [TI2]:** Comment was made by NamPower that REFIT Pricing should be revisited as “free market bidding” would yield lower prices.

That is true, however, bidding for smaller projects is slow, inefficient and a REFIT Program that creates a transparent, cost-reflective, enabling environment has benefits in mobilizing the private sector that projects a business Model for the larger projects to emulate, thus setting a Model and reference, going beyond the small projects of the REFIT Program.

**Comment [TI3]:** A developer raised the point that wind farms in the range of 2-5MW would be “difficult...there is no expertise or equivalent project achieved here...we should be able to achieve and install cost-efficient projects to 10 MW with efficient 2-3 MW wind turbines...below 5MW, the use of this turbine size is less cost-effective basically due to need of big installation cranes...the only possibility will be then to use multiple smaller wind turbines, which imply lower hub height – thus less energy yield per MW installed – or to combine a 5 MW project under the REFIT Program with a self-consumption project up to 5MW in the same location...Thus the 5 MW threshold for wind energy will decrease the viability of projects unless tariffs are increased enough...we would recommend to raise the maximum capacity of the wind projects under the REFIT Program to 10 MW...for the rest of RE technologies, there might not be any issue of installation cranes to be shipped from abroad...it is then not specifically required to raise the maximum capacity of these technologies.”

We are not convinced that Namibia should abolish less than 5MW wind farms while we agree that the REFIT Program could be extended up to 10MW projects for wind (and possibly solar and biomass).

There is room for all project size with all types of technologies, if indigenous resources are to be mobilized, the resource mix diversified, and in line with available capital, human, and natural resources to alleviate the supply-demand gap.

There is enough price differentiation between 500kW and 5MW (17.0 to 10.6 US cents/kwh) to justify coverage of the different costs and when there is an opportunity to capture a smaller project potential through an SME that will help alleviate the supply-demand gap, it should not be ignored, if the project proves viable given the REFIT levels.

## PART III – RULES

The successful implementation of the REFIT Program is contingent upon the adoption of accompanying Rules that will help mobilize the private sector participation in the generation of power from RE technologies. A key element for the success of the REFIT Program is to maximize predictability so that would-be developers would know how the different considerations in the enabling environment affecting the project structure will be treated and how risk allocation arrangements of the project, over and beyond offtake price, will be apportioned between the parties. Without such clarifications articulated in the form of Rules, REFIT prices alone are inconclusive to make a determination of whether a project will be adequately compensated to cover its costs and provide an acceptable return on equity (ROE) which is retained to be 16% Nominal ROE After Tax.

The objective of the Rules is to reach a level of clarification from the outset so that the REFIT Program's message to the private developers is "*if you build it, we are obligated to buy it at the pre-determined price*" as long as they put together a Viable Project as defined in the Definitions herein. Otherwise, a REFIT price gets eroded, first, by the various points left undecided and thus to be negotiated (connection costs, inflation treatment, etc.) and, second, by the unpredictability of the environment in which the project is to operate (duration for the Program, carbon credit treatment, etc.) were it not for the Rules proposed herein. This reduces the ability of IPPs and their bankers to project cash flows and assess associated risks, thus making it impossible to establish the viability of the project. Alternatively, clarification on such elements allows would-be developers to confidently spend the required money upfront to structure their projects and put together a bankable Feasibility Study, with the confidence that if they do a credible job then the public utility will have an obligation, under proposed Rules, to buy the power at a defined price and with predictable risk allocation arrangements.

In what follows, twelve key objectives of the enabling environment and/or risk allocation arrangements relevant to all projects are singled out and an associated Rule is articulated which aims to define an equitable treatment for the developer and the Offtaker.

### 3.1 TAKE-OR-PAY OBLIGATION

#### 3.1.1. Objective:

To be credible, a REFIT Program has to be fair to IPPs and their investors as well as to the Offtaker. The Program must not unduly expose the Offtaker to obligations they should not undertake while, at the same time, it should give assurances that a Viable Project that meets certain eligibility requirements will find its place in the system. Thus there should be Rules that limit certain Viable Projects by distance, Program ceiling, etc. and also grant the Offtaker the opportunity to make its own assessment of project viability, including aspects that may be subjective in nature (such as assumptions about the future, qualification of contractors, operators, etc.). At the same time, however, there should be a presumption, as upheld by the Regulator, that if a project is proven viable and meets the Rules contained herein, the Offtaker should sign a PPA with the qualifying IPP.

**Comment [TI4]:** During the Stakeholders Workshop, NamPower objected to the idea of it being the single designated Offtaker. At least one RED (Coastal) agreed. We noted the objection.

In its review of the comments received, ECB upheld the original position taken that for the REFIT Program to work there has to be a single designated Offtaker and that has to be NamPower for following reasons:

- If the program is to encourage the private sector to be mobilized, predictability has to be an essential element of it. As such there has to be a Government owned buyer of last resort for all Viable Projects if the REFIT Program is to project the Government's "*if you build it we are obligated to buy it at the pre-determined price*" commitment, as long as the Project is viable and meets the Program Rules.
- This assurance can only be given by a wide based cost aggregator of the resource mix, and that is NamPower.
- Last but not least, clearly Government cannot dictate the private sector to buy electricity from a specific project because it is Viable. It can do so to its fully owned agency NamPower, as its shareholder as a policy to promote mobilization of resources into the sector for increased supply of electricity.
- REDs can enter into Willing Buyer – Willing Seller arrangements as provided under Rule 3. The REFIT Program does not obligate any IPP to sell to the Government and allows them to by-pass the Program by one-on-one arrangements, which is desirable as it subjects the Program to the discipline of the marketplace.

While maintaining ECB's position to keep NamPower as the Offtaker, we have neutralized the language used in the Rules, referring only to an "Offtaker", while designating NamPower as the Offtaker in the Definitions, as this point remains to be discussed in the next round of Stakeholder Meetings.

3.1.2. **Rule #1**

The Offtaker<sup>1</sup> and the IPP qualified under the REFIT Program shall enter into a take-or-pay PPA, in compliance with the REFIT conditions and associated PPA Guidelines, subject to (a) the Project meets the criteria specified herein, (b) good faith negotiations, and (c) proper licensing and PPA approval by the ECB.

**Comment [TI5]:** This language was considered "too weak", however, given the subjective nature of assessing some risk elements, it cannot be reworded as an obligation. Still, it leaves a burden of proof collectively on the Offtaker and the IPP to either sign a PPA or come up with plausible explanations as to why the project is not viable or which criteria of the REFIT Program are not met.

**3.2 PROJECT VIABILITY**

3.2.1. **Objective:**

To ensure only Viable Projects are accommodated (even though project viability is based on assumptions regarding the future which can be subjective), a developer has to establish that the proposed project meets the standards of best practice in its conception, design, planning, and execution in each of the disciplines involved such that it is feasible with respect to technical, commercial, financial, economic, environmental, legal, and other relevant criteria.

3.2.2. **Rule #2**

Projects must be technically, environmentally, and legally viable and must meet the financing criteria of their creditors and investors. The Offtaker has the right to withhold signing a PPA unless the project is a Viable Project.

**Comment [TI6]:** The definition of Viable Project in capital letters is sufficient and need not be repeated here, as Definitions are part of the Rules.

**3.3 WILLING BUYER – WILLING SELLER ARRANGEMENTS**

3.3.1. **Objective:**

To be flexible, the REFIT Program must not keep prospective eligible projects captive to its regime but subjects itself to the discipline of the marketplace where willing buyers and willing sellers may opt to by-pass the Program and reach their own independent arrangements outside the Program.

The Definition engages the concept of Best Utility Industry Practice, thus seeking to remove subjectivity by collective judgment of peers and practitioners. The alternative of not having a Viable Project concept would leave decisions to subjective interpretations motivated by the parties' unique business interests and render the process open ended, and thus ultimately to the unilateral interpretation of the Offtaker. This would remove the predictability essential to mobilizing the private sector under an "if you build it we are obligated to buy it at the pre-determined price" principle for Viable Projects.

3.3.2. **Rule #3**

All projects shall have the right to enter into willing buyer – willing seller arrangements with a party other than the Offtaker, at mutually agreed price levels, irrespective of the REFIT levels, subject to proper licensing. In line with the take-or-pay provisions, there shall be only one offtaker in each PPA. Such a willing buyer shall be allowed, subject to ECB approval of the PPA, to recover its purchase costs from its customers on a cost pass-through basis.

In essence, The Offtaker may not unreasonably and without evidence to the contrary withhold determination of a Viable Project, when a project has obtained the proper license from ECB and has been proven bankable by the presence of creditors and investors ready to collectively provide the Total Financing Required.

**3.4 DISTANCE TO THE GRID SUB-STATION**

3.4.1. **Objective:**

To avoid generalizing connection costs, REFITs must be calculated on a cost plus return basis before incorporating any connection costs, as these will vary depending on distance

<sup>1</sup> There has to be only one designated Offtaker with the obligation to buy if the project is proven Viable.

to an appropriate connection point on the Grid where there may or may not be a sub-station to be built, upgrades to be made, or wheeling charges to pay to a nearby Distribution Network. Generalizing connection costs would lead to REFIT prices which are more attractive for projects closer to a Grid sub-station and less so for projects further out, all else being equal. There still remains the need to account for connection costs without leaving the Offtaker exposed to a limitless liability to connect any project deemed viable, irrespective of distance to a Grid sub-station.

3.4.2. **Rule #4**

Only projects that are within [*specified distance, say 10*] kilometers from a Grid sub-station at the time the PPA is signed shall be eligible for REFITs and without any penalty or reward for the distance from such Grid sub-station. Nonetheless, the Offtaker shall, at its sole discretion, retain the right to accept or reject projects beyond [*specified distance*] kilometers<sup>2</sup> for:

- (a) off-Grid development, or
- (b) for a negotiated discount on the REFIT price, based on the extended distance beyond [*specified distance*] kilometers, or
- (c) at the IPP's offer to bear the costs and build the line beyond the [*specified distance*], or
- (d) a wheeling charge the Offtaker may negotiate on a one-on-one basis with a Distribution Network owner willing and physically equipped and capable to wheel the IPPs power to a delivery point of the Offtaker's choice.

3.5. **CONNECTION/WHEELING COSTS**

3.5.1. **Objective:**

To protect the Offtaker against connection/wheeling costs (including possible wheeling charges paid to a third party), it has to be assured that it will recover those and also that it will not be exposed to unlimited liabilities to connect eligible projects in accordance with these Rules. As such, during initial project review (see Part V for Application and Project Screening Protocol) and before licensing a project, ECB, following consultations with all affected parties including the Offtaker, should be in a position to assess if a project, given its size, distance to the connection point at the Grid or Distribution Network, required upgrades, if any, and availability of substation is suitable to undertake and burden consumers with its associated connection/wheeling costs.

3.5.2. **Rule #5**

The Offtaker shall be allowed to pass through any connection/wheeling costs associated with connecting projects, properly licensed and approved by the ECB and eligible under the REFIT Program.

<sup>2</sup> In circumstances beyond 10 kilometers, the Offtaker may still be the party best positioned to absorb the risk associated with getting rights of way for the connection lines and do so at least cost. However, in its discretion to accept or reject such projects, it may or may not assume such risk after it assesses the merits of the project in question and its impact on the country's electrification efforts.

**Comment [TI7]:** The Stakeholders were generally of the opinion that distance to a sub-station is not a good proxy for connection costs, as such costs will vary by type of site specific circumstances (such as upgrades needed, way-leaves, site resources, performance requirements, etc.) and that, therefore, a standard allocation for connection costs should be made for the REFIT levels and then the developer should decide whether his project is economic within that threshold or not.

While the above argument has its merits, it reflects the same dilemma that non-inclusion of connection costs imposes, but this time in reverse. Namely,

- inclusion of an average artificial connection cost will punish some projects with too low a price (for not adequately covering connection costs) and give windfall profits to other projects (built on sites with low connection costs) with too high a price.
- on the other hand, non-inclusion of connection costs exposes the Offtaker to too wide a spectrum of connection costs, within the same 10 km limit, that may end up being too excessive (or not) to commit in advance.

However, the Offtaker exposure concern is addressed by:

- (a) limiting the distance to an existing sub-station (to say 10 km, which admittedly may be only a partial proxy for the connection costs on any given site), but also by
- (b) allowing the RE IPP Committee at EOI stage to take into account the size, distance from the Grid sub-station, associated connection costs (including required upgrades, if any) and associated transmission losses and thereby decide to issue an objection to the project, lifting the obligation to the Offtaker to take on unwarranted connection costs.

In its review of the comments received, ECB upheld the original proposal of not including connection costs in the REFIT levels, because it felt that the above "a" and "b" arrangements provide sufficient oversight to analyze the case specific merits in advance and avert unwarranted connection costs for even an otherwise Viable Project. Particularly, it was also felt that:

- (i) a generation developer would not have a government planner's long-term perspective or a network owner/operator's license and expertise to invest in connections with specifications that can accommodate projects beyond the immediate project (a grid operator is in a better position to plan grid development both for future generator connectors and future load connectors).
- (ii) a single developer will only design the connection line based only on his ...

3.6. **LAND**

3.6.1. **Objective:**

To avoid generalizing land costs, REFITs are calculated on a cost plus return basis before incorporating any land costs and for a 20 year useful operating project life. Generalizing land costs (rural vs. urban, etc.) would lead to REFIT prices where projects on low cost land receive higher than targeted returns and projects on high cost land receive lower than targeted returns.

3.6.2. **Rule #6**

All land for the project sites to be built on government owned land shall be passed on free of charge<sup>3</sup> to the developer under a Build-Own-Operate-Transfer arrangement (unless the associated PPA is renewed in 20 years), if the appropriate concession rights to build such project and the appropriate licenses are duly obtained<sup>4</sup> by the developer. Projects to be built on privately owned sites, with duly obtained licenses and concession rights to build such project, will be subject to an extra remuneration not exceeding 5%<sup>5</sup> of the REFIT, verified by independent appraiser valuation and as mutually agreed by the Offtaker and the developer.

3.7. **FISCAL TREATMENT**

3.7.1. **Objective:**

To ensure equal fiscal treatment, REFITs are calculated for targeted returns after including all applicable taxes, including but not limited to import duties and corporate taxes. If the Government chooses to offer tax holidays in order to reduce prices across the board, such a measure could be applied on an equal basis for all projects and supported by an applicable Rule. In turn, this would remove aggregate costs on the Offtaker and remove possible pressures on consumer tariffs.

3.7.2. **Rule #7**

All projects under the REFIT Program shall be subject to the same applicable taxes, including but not limited to duties for imported goods and corporate taxes on profits, unless the developer is already a beneficiary of an existing, ratified Implementation Agreement or Concession Agreement already in effect with Conditions Precedent already satisfied at the time of submitting an Expression of Interest as per the provisions of the REFIT Program, which Implementation Agreement or Concession Agreement already

**Comment [TI8]:** During the Stakeholders Workshop, there were a number of proponents for including an average land cost to the posted REFIT levels and thus doing away with Rule #6.

In its review of the comments received, ECB upheld the original proposal on the basis that any average price will be artificial, punishing some projects with too low a price (for not adequately covering land cost) and giving windfall to other projects (built on cheap or free land from the Government) with too high a price.

It was felt that

- land was different than other CAPEX components as the Government has the ability to allocate land in select sites and utilizing that advantage would translate into keeping tariffs low;
- therefore, if that was an advantage to be utilized then those projects should not be getting a windfall by having a higher REFIT level (which would be the case if an artificial average land cost were to be included in posted REFIT levels);
- it was also felt that the proposal had safeguards for the other end of the spectrum as well, since the land cost would be recognized only for up to 5% of the REFIT level, thus putting a discipline on the developers on how valuable a land they could use before having to eat into their own ROE..

Also please see about Letter of Approval in Principle from Land Owner in Part V (Application Procedures)

**Comment [TI9]:** This is to accommodate the comment received during the Stakeholders Workshop that the issue is relevant to all taxes and not just import duties and corporate taxes.

<sup>3</sup> If (a) there are regulatory/legal restrictions against passing government owned land free of charge to a Developer for the development of RE projects, or (b) there is a special regime of allocating land rights in Namibia, or (c) this cannot be accommodated for political or other reasons, then the Rule would have to be rephrased to add cost of such land lease to the REFIT price (again up to 5%) to compensate the Developer for the cost.

<sup>4</sup> The issuance of these licenses and concession rights is the control mechanism for the Government to prevent projects from being built on land reserved for alternative purposes.

<sup>5</sup> This ceiling seeks to estimate the value of land in such projects, so that together with the provisions of seeking an independent appraisal valuation and the mutual agreement of the PPA parties, it provides a framework for reaching agreement.

specifically grant tax exemptions or tax holidays already in effect or to go into effect as already agreed.

### 3.8. CURRENCY OF PAYMENT

#### 3.8.1. Objective:

To enable foreign banks to provide the long-term financing needed, currency mismatches between project revenues and debt service must be avoided. Most renewable energy projects within the 5MW category have cash flow profiles that necessitate debt repayment periods between 5 to 10 years. This necessitates long-term funding that is limited in the domestic market and potential IPPs are likely to seek debt from foreign lenders. These will typically be denominated in foreign currency, possibly ZAR, US\$ or Euro. In all these cases, which are likely to be the norm, if the REFIT payments are denominated in local currency there will be a currency mismatch between revenues and debt service obligations. A currency mismatch can be mitigated either by having revenues paid in the currency in which the debt is denominated, or by hedging the risk against inevitable variations in the exchange rate. The latter is an expensive tool which will be reflected in the price that the developer charges to the Offtaker. Furthermore, it is often not possible, let alone being expensive, to hedge such long segments from the outset. In case of a mismatch between the currencies in revenues versus loans, foreign banks (that would necessarily have to be relied upon for long term loans denominated in hard currency) would not provide the necessary financing required for the larger sized projects.

**Comment [TI10]:** The fact that the N\$ is pegged to the Rand does not remove the necessity for this Rule. Not all project will be financed in Rand. Furthermore, projects financed in Rand may be exposed to currency exposure if Namibia one day decides to peg the N\$ to a basket of currencies. This is possible given the PPAs are for 20 operating years.

#### 3.8.2. Rule #8

The REFIT shall be payable in Namibian Dollars (NAD). The PPA shall reflect a reference REFIT in US\$ converted from this REFIT in NAD at the bid exchange rate<sup>6</sup> (or another hard currency by the mutual agreement of the parties to the PPA converted at the cross exchange rate of the Bid Exchange Rate specified and at the time so specified) so that the project developer does not take any currency exposure, provided that if the project is financed in local currency for any portion of the financing required (long term debt plus equity) the REFIT shall remain as expressed in NAD for that same proportion that the local currency financed portion represents to the Total Financing Required (long term debt plus equity). The actual transaction for the associated invoice shall be made in local currency at the prevailing exchange rate on the date of such invoice, provided that the parties reach mutually satisfactory arrangements to mitigate the convertibility and transferability risks associated with such payments in servicing debt and repatriating capital and profits.

**Comment [TI11]:** The proposition was made that notwithstanding this Rule, projects that are financed locally should be given priority to promote local financial institutions.

In practice, this would be difficult to exercise as it would make the validity of a given ECB license and a Letter of Approval in Principle by Land Owner, preventing the private developer from advancing on project preparation and financing (which requires spending money) knowing that at any point in time a late comer that finances the project locally can overtake the rights and priorities.

There is value to the Government in establishing predictability so that the developers can confidently advance the preparation of projects.

<sup>6</sup> Means the US\$/NAD offered exchange rate prevailing at the close of business by the Bank of Namibia on the date of the invoice.

3.9. INDEXATION

3.9.1. Objective:

To provide predictability to developers on their future revenues as well as for their standing vis a vis their competitors' future tariff adjustments, the rules for (a) adjusting REFITs in line with inflation for projects with PPAs under the REFIT Program, and (b) for the REFITs posted from year to year, need to be clear with everyone treated on an equal footing. This predictability is paramount to the success of a REFIT Program, or to mobilizing private sector for any project for that matter. Guarding project value against inflation, which is not in the control of a Developer, is necessary and applicable not only to OPEX but to CAPEX for replacements, Working Capital, variable interest costs payable on Loans (or to compensate the higher fixed interest rate opted, if the project raised capital at fixed interest rates,) and the original Equity Investment base of the project (which are losing opportunity cost, as they could have been invested elsewhere collecting inflation covering market rates). Accordingly, the proposed REFITs are calculated assuming inflation adjustments.

3.9.2. Rule #9

Indexation shall be applied to Old Projects (those post-PPA signing) and New Projects (those pre-PPA signing) in a manner that:

- (a) REFITs stated in Power Purchase Agreements for Old Projects will be adjusted on the basis of the US\$ Producer Price Index (PPI) starting from the year (date of signature) of the PPA, and
- (b) REFIT tables (applicable to New Project), on the basis of US\$ PPI plus differential inflation (as compared to the PPI) consisting of a basket of fuel, cement, steel, and labor (plus any other key cost factors that may be relevant). This shall be made public every year by the ECB, so that all IPPs can be assured of a level of price predictability.

3.10. RESOURCE CEILINGS

3.10.1. Objective:

To conform to system reliability requirements as well as to control the cost of the resource mix, ceilings for levels of procurement from each of the individual Resource Bases in the REFIT Program will be imposed by the Government. The initial ceilings may be arbitrarily kept low for select resources bases that are subject to intermittence problems (seasonal wind) and/or expensive (solar) to include in the aggregate cost. In time, depending on the differential rate of additions into the system of each individual Resource Base, these ceilings could be increased. Once the ceiling is reached, the Offtaker would no longer be obligated to sign a PPA at the REFIT price for that particular technology, irrespective of the viability of the project.

**Comment [TI12]:** Banks want to see prices fixed in real terms for 20 operational years (which is the project life) and with predictable adjustments that keep up with inflation and do not expose the project to currency fluctuations. That's what the proposed REFIT Program endeavors to do.

Banks just want a cost-reflective price that gives an acceptable return from the outset that everyone can feel comfortable with. They expect this to be maintained by inflation adjustments and by having the project avoid currency exposure through a match between the currency of revenue streams and debt service. Thus Rules 8 and 9. The alternative is un-financeable projects.

If average inflation on US\$ were 2.16% over 2000-14, then a price contracted for 10 US cents in year 2000 must be adjusted to 13.5 US cents in 2014. Most programs leave adjustments to the Regulator, but that creates ambiguity and risks mixing business with social pricing. We, instead, propose complete transparency with predictable applications not left to any agency's discretion. This way neither the Offtaker has a windfall gain nor the producer has an unpredictable loss. The parties agree on an index and apply it as such, not expecting to gamble. This way they can both concentrate on the business they know how to run best, which is electricity production and electricity transmission/distribution (not financial hedging of inflation which is not their expertise or business).

The Regulator, in turn must provide for cost pass-through to assure that the burden of inflation does not rest with the Offtaker. Eventually the consumers must pay for inflation. That's why the consumer prices must be increased accordingly. If the Government wants to subsidize that, then that is a different policy matter. (We did not stipulate cost-pass through here - as we did for connection cost pass-throughs in Rule 5 - because inflation is a broader monetary policy issue rather than a project specific cost issue and the Government can choose how to compensate the Offtaker for higher REFITs due to inflation. But the Offtaker must be compensated as well as the IPP for inflation.

Not adjusting the REFIT for inflation is equivalent to saying we do not want to give the promised return to the IPP if inflation occurs, which is good reason for the IPP never to invest and his bankers never to extend credit. Which is why there is a supply-demand gap in sectors where the rules are not predictable.

Not compensating the Offtaker for the same inflation adjustment to the IPP is equivalent to asking the Offtaker, a commercial entity, to subsidize the consumers. Which will ...

3.10.2. **Rule #10**

The [designated authority], in consultation with [designated authority] and [designated authority], shall impose overall ceilings on a per resource basis that may be increased<sup>7</sup>, from time to time, at the [designated authority] sole discretion, to balance out technical intermittence problems as well as tariff impact, depending on the rate of integration of New projects into the system. The initial ceilings, until further notice by the [designated authority], shall be:

Solar.....	[60 MW]
Wind.....	[60 MW]
Bagasse.....	[30 MW]

**Comment [TI13]:** The proposition was made that these ceilings could be differentiated by region. This is possible, yet may be an unnecessary and not worthwhile complication in administering the Program. It can, however, be added if Stakeholders continue to see merit in it.

The fact that the Rule allows for the ceilings to be increased from time to time, at the [designated authority]'s sole discretion, gives the necessary control.

3.11. **CARBON CREDITS**

3.11.1. **Objective:**

To credit the Carbon Credits to the Government, which is deemed to be the rightful owner of such credits, REFIT levels are calculated before any carbon credit. Splitting the proceeds would incentivize the IPP to collect while also not providing them with too much of a windfall over and beyond the cost plus return intended under the REFIT Program<sup>8</sup>.

3.11.2. **Rule #11**

All carbon credits shall be deemed as belonging to the Government. However, the Government, at its sole discretion, may choose to split the proceeds at some pre-negotiated proportion, if it deems such partitioning would incentivize a particularly well positioned IPP with experience in this carbon credit market to collect such credits.

3.12. **REFIT DURATION**

3.12.1. **Objective:**

To give a meaningful duration for published REFITs (adjusted by indexation), so developers can assess the investment environment with some predictability; they must remain for at least 3 years. By the same token, beyond 3 years, core structural assumptions (despite indexing) may shift and should be subject to review. The Regulator should reserve the right to review these REFITs in the second year anniversary of the declaration of the proposed Rules, provided that only upward revisions and adjustments would be considered and those shall be applicable to Old and New Projects alike.

<sup>7</sup> As predictability is paramount to the success of a REFIT Program, only increases (not decreases) should be allowed, so private Developers of a Viable Project do not take the risk of having a previously announced ceiling lowered after they have spent money to structure their project.

<sup>8</sup> In general, the carbon market allows governments to package credits from REFITs for 'wholesale' but this is presently a relatively small share of the market and has its special cumbersome procedures. This option can be evaluated in parallel to implementing the REFIT Program. The key point is that these credits belong to the Government because of the way the REFITs have been priced and the collection on the credits can be implemented in various ways, as long as the regulatory measures assign the government as the rightful owner of the credits.

3.12.2. **Rule #12**

The Duration of REFITs shall be for 3 years<sup>9</sup>

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<sup>9</sup> Once a PPA is signed under the provisions of the REFIT Program, the contract will remain non-negotiable for the next 20 years, with prices adjusted only according to the indexation provisions of that PPA agreed upon at the time of signature in compliance with the indexation rules of the initial ongoing REFIT regime. The ongoing published regime of REFITs will be escalated by PPI adjustments (plus differential inflation for steel etc., as explained in the indexation provisions) but that will not affect signed PPAs. In 3 years there will be another set of published REFITs, but again existing PPAs will follow what was signed (with the indexation agreed in the contract and not in the new regime).

## PART IV – PPA GUIDELINES

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- 4.1 The PPA Guidelines listed herein are principles to serve as roadmap in the negotiations of PPAs entered into between the Offtaker and the IPP(s) under the recommendations contained herein. These guidelines do not advocate a standard PPA, as standard “fill in the blanks” PPAs do not allow enough flexibility. Instead, these guidelines seek to provide uniformity in principles, and in particular, compliance with the Rules provided in Part III, along with flexibility when negotiated between an IPP, as Seller, and the Offtaker as the Buyer, and monitored for compliance by ECB, as Regulator.
- 4.1.1 **Commercial Basis:** Projects seeking to sign a REFIT based PPA subject to the Rules proposed herein must be technically, legally, environmentally viable and meet the financing criteria of their creditors/investors. The Offtaker retains the right to deny signing the requisite PPA and deny access to the Grid (see Part V).
- 4.1.2 **Legal and Regulatory Compliance:** All contracted PPAs should comply with all relevant laws, regulations, codes and policies of the Government of Namibia.
- 4.1.3 **Payment:** All PPAs should be in the form of a “take-or pay contract.”
- 4.1.4 **Period:** The term of the PPA for a REFIT based procurement should be for 20 years and it may provide for extensions by mutual agreement, subject to proper maintenance and refurbishment of assets in the interim, as agreed by the parties. As a general rule, the term of a PPA must, at a minimum, match the maturity of the loans financing the project, which in turn should be less than the average anticipated life of the plant.
- 4.1.5 **Currency:** The REFIT shall be payable in Namibian Dollars (NAD). The actual transaction for the associated invoice shall be made in local currency at the prevailing exchange rate on the date of such invoice, provided that the parties reach mutually satisfactory arrangements to mitigate the convertibility and transferability risks associated with such payments in servicing debt and repatriating capital and profits. The PPA shall reflect a reference REFIT in US\$ converted from this REFIT in NAD at the Bid Exchange Rate (or another hard currency by the mutual agreement of the parties to the PPA converted at the cross exchange rate of the Bid Exchange Rate specified and at the time so specified) so that the project developer does not take any currency exposure, provided that if the project is financed in local currency for any portion of the financing required (long term debt plus equity) the REFIT shall remain as expressed in NAD for that same proportion that the local currency financed portion represents to the Total Financing Required (long term debt plus equity).
- 4.1.6 **Capacity Charges vs. Energy Charges:** Projects seeking to sign a REFIT based PPA should have an Energy Charge only.
- 4.1.7 **Firm or Non-firm Energy:** Notwithstanding the Energy-Charge-only principle, the parties to the PPA may, by mutual agreement, choose to convert a certain portion of the projected total annual Energy Charge to a Firm Energy portion payable at a 10%

**Comment [TI14]:** This was welcomed by at least one Developer as an incentive for projects with more reliable wind profiles and for promotion of energy storage solutions.

premium (same 10% applicable to all projects willing to commit and for the amount they are willing to declare firm), provided that a mutually agreed penalty exceeding this 10% (amount to exceed 10% is left to the discretion of the parties in each PPA) is imposed, if the firm commitment is not honored by the IPP. The certainty with which power is provided should be clearly defined, but it does not have to be uniform across all projects.

- 4.1.8 **Indexation:** Indexation shall be applied to Old (those post-project completion) and New projects (those pre-PPA signing) in a manner that:
- (a) REFITs stated in Power Purchase Agreements for Old Projects will be adjusted on the basis of the US\$ Producer Price Index (PPI) starting from the year of the PPA at financial closure, and
  - (b) REFIT tables (applicable to New Project), on the basis of US\$ PPI plus differential inflation (as compared to the PPI) consisting of a basket of fuel, cement, steel and labor (unless other cost factors are added in the interim before fixing the methodology). This shall be made public every year by the ECB, so that all IPPs can be assured of a level of price predictability.
- 4.1.9 **Operating Regime:** Actual dispatch should be done by NamPower in its capacity as System Operator of the Grid, and includes a Distribution Network for purposes hereof. Scheduled Maintenance planning should be coordinated with and approved by the System Operator within the operating parameters of the Plant's technology. Ancillary services should be included in the PPA, as mutually agreed and at separate compensation.
- 4.1.10 **System Losses and Imbalances:** Losses attributable to the IPP(s) need to be allocated as such. The IPP should be bound to follow the directions of the System Operator, except where it is necessary to take measures to prevent imminent damage to its own or any other equipment, and should maintain system parameters within acceptable/reasonable limits as per the Grid Code, except where it is necessary to take measures to prevent imminent damage to its own or any other equipment.
- 4.1.11 **Point of Sale/ Point of Delivery:** The point of sale/delivery (and therefore transfer of ownership and risk) of the energy, for REFIT based projects that are within [*specified distance*] of the Grid sub-station, should be at the generating Plant site. This follows the principle that only projects that are within [*specified distance*] of the Grid sub-station shall be eligible for REFITs and without any penalty or reward for the distance from such Grid sub-station. Nevertheless, the Offtaker, at its sole discretion, shall retain the right to accept or reject projects beyond [*specified distance*]:
- (a) for off Grid development, or
  - (b) for a negotiated discount on the applicable REFIT/FIT price, based on the extra distance [*specified distance*], or
  - (c) at the developer's offer to assume the costs and build the line beyond [*specified distance*], or
  - (d) a wheeling charge the Offtaker may negotiate on a one-on-one basis with a Distribution Network owner willing and physically equipped and capable to wheel the IPPs power to a delivery point of the Offtaker's choice..

This is so as the proposed REFITs are calculated on cost plus return basis to the generation project, without consideration to the distance and cost to the Grid/Distribution Network connection. This avoids generalizing for all projects and having the closer ones have a windfall while distant ones forego a price increment. This provision should be tempered by case specific considerations, at the discretion of the Offtaker, when network development on the occasion of one particular IPP would give access to other potential IPPs, in which case any Grid/Distribution Network extension costs beyond the [*specified distance*] perimeter should be apportioned by the Offtaker, as it reasonably sees fit and practicable, to simultaneous beneficiaries (i.e. two consecutive beneficiaries that are beyond the [*specified distance*] limit but are within [*specified distance*] of each other should share the costs in a reasonably proportioned way.)

- 4.1.12 **Deemed Energy Output Payments due to Transmission Line Construction Delays:** This will be payable under the terms of the take-or-pay arrangements of a signed PPA by the Offtaker to the IPP, for projects within [*specified distance*] distance from the Grid, if the Offtaker does not make the transmission line connection available within the time frame mutually agreed by the Offtaker and the IPP in the Connection Agreement. For projects beyond [*specified distance*], within the Offtaker's discretion to accept or reject such projects, the payable Deemed Energy Output should be as agreed by the Parties.
- 4.1.13 **Responsibility for Connection/ Interconnectors:** Responsibility for connection to the point of delivery must reside with the IPP and associated losses with delivery to such point allocated to the IPP's account.
- 4.1.14 **Carbon Credits and Other Similar Benefits:** The REFIT levels are based on cost plus return estimates not taking into account any windfall benefits to the developer accruing from carbon credits. As such, these benefits should be duly released and assigned to the government. However, the government through the Offtaker, at its sole discretion, may choose to split the proceeds at some pre-negotiated proportion, if it deems such partitioning would incentivize a particularly well positioned IPP with experience in this carbon credit market to collect such credits. This is on the basis that the REFITs are calculated at cost plus return before any carbon credit benefits.
- 4.1.15 **Liabilities/Damages/ Losses/ Compensation Events:** The PPA should make provisions for adequate protection of, and compensation to the Offtaker in the Event of Default by the IPP. Similar provisions should be applicable to the IPP for events of default caused by the Offtaker along with the guarantees against expropriation.
- 4.1.16 **Triggers for Exceptional Circumstances:** Certain exceptional circumstances, and associated pre-agreed principles for remedies, should be recognized in the PPA, examples of which include:
- Change in regulatory framework
  - Change in law and in the tax regime
  - Project fails before it comes on line
  - Project becomes uneconomic

- Force Majeure
- Failure to meet a financial obligation vis-a-vis banks and other investors.

4.1.17 **Warranties:** Sufficient warranties to cover the Offtaker's exposure in the event of non-performance by the IPP, including Seller abandonment, must be put in place. Take-or-pay arrangements should cover the IPP for non-performance by the Offtaker.

4.1.18 **Applicable Law:** While the standard would be to have laws of Namibia as governing law and the Namibian courts as forum for dispute resolution, flexibility regarding the choice of law can be exercised given the preferences of the parties and financing banks involved, particularly taking into account security and trustee arrangements that may be required by international banks to make the associated PPA bankable, with offshore escrow accounts subject to foreign law jurisdiction.

## PART V – APPLICATION PROCEDURES

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Along with listing the REFIT tariffs and defining the applicable Rules and PPA Guidelines which are intended to guarantee transparency, predictability and risk allocation parameters, a successful REFIT Program also requires an application and project screening protocol, as a one-stop shop approach, to facilitate decision-making in issuing proper generation licenses to IPPs to develop RE power projects under this Program.

This approach proposes the formation of a RE IPP Committee<sup>10</sup> comprising representatives of the Ministry of Mines and Energy (MME), NamPower, ECB, REEEI and other entities as deemed necessary, and chaired by the [*designated authority*], to evaluate the applicants' expression of interest and pre-feasibility of an RE project.

### 5.1. THE RE IPP COMMITTEE

- 5.1.1. Private investors who wish to become power producers shall send an Expression of Interest (EOI) to [...], attention of the [*designated authority*] chairing the RE IPP Committee.
- 5.1.2. The RE IPP Committee shall review the EOI and communicate its determination on the proposed project within [*forty*] business days from the date of receipt of the EOI.
- 5.1.3. The RE IPP Committee's determination shall be limited to issuing a non-objection or objection to the Offtaker to enter into PPA negotiations and to ECB to issue the proper license.
- 5.1.4. Upon the lapsing of the aforementioned [*forty*] business days, the absence of any determination from the RE IPP Committee shall be deemed as a non-objection, by the same RE IPP Committee, to the proposed project, as structured and conceived.
- 5.1.5. The RE IPP Committee's deliberations to issuing an objection shall be confined to determining that the proposed project: (a) has *a priori* evidence for it not to be deemed a Viable Project<sup>11</sup>; and/or (b) is of a size and distance from the Grid (with or without a sub-station, with or without the possibility to wheel through a nearby Distribution Network) whose connection costs (including required upgrades, if any)

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<sup>10</sup> Although ECB does have a licensing procedure to be followed, the purpose of the RE IPP Committee is not to replace such procedure but to form a one-stop forum by key stakeholders, so individual projects can be pre-screened on a pre-feasibility basis. ECB and the Offtaker, respectively, retain their procedures for ECB to independently issue or not licenses and for the Offtaker to enter or not into PPAs, once the non-objection of the RE IPP Committee has been obtained.

<sup>11</sup> A Viable Project means a project involving the construction of a power plant which in its conception, design, planning, and execution meets the standards of best practice in each of the disciplines involved that will render such project feasible with respect to technical, commercial, financial, economic, environmental, regulatory, legal, and other relevant criteria.

and associated transmission losses make it unfeasible to burden the consumers with such connection costs.

- 5.1.6. The declaration of an objection from the RE IPP Committee shall prevent: (a) the Offtaker from entering into a PPA with the applicant on the proposed project in the manner it is structured and conceived, unless restructured and enhanced, in which case the project by the same developer, conceived under a more viable structure, may be presented to the RE IPP Committee for a second and final consideration; and (b) ECB from issuing the proper license.
- 5.1.7. The declaration of a non-objection from the RE IPP Committee or the lapsing of the aforementioned [forty] business days with no declaration shall not (a) be deemed to be an endorsement that the proposed project is a Viable Project; or (b) obligate the Offtaker, a commercial entity that reserves its own right to make its own independent assessments, to enter into a PPA or not; or (c) obligate ECB, an independent overseeing authority, to make its own independent determination, to issue the proper license.
- 5.1.8. In the interim of the aforementioned [forty] business days the Offtaker, at its sole discretion, shall be free to initiate, but not complete, PPA negotiations, and ECB, at its sole discretion, shall be free to initiate, but not complete, due process for issuing the proper license.

## 5.2. THE EXPRESSION OF INTEREST (EOI)

- 5.2.1. The EOI is the first communication of the applicant's intention to develop and invest in a project under the proposed Rules contained herein.
- 5.2.2. It is expected that an applicant who sends an EOI has (a) undertaken a pre-feasibility study, and (b) can provide all the relevant information, further described below, to the RE IPP Committee to facilitate decision making.
- 5.2.3. The information provided in the EOI should be of sufficient breadth and depth to demonstrate the applicant's commitment and ability to proceed (upon receipt of a non-objection by the RE IPP Committee) with further development of the project, to establish the proposed project as a potentially bankable project, all subject to a full Feasibility Study being completed subsequently, an associated Environmental Impact Assessment (EIA) being accepted by all the competent authorities, and a proper PPA being duly signed under the tariff structures and Rules plus PPA Guidelines herein.
- 5.2.4. The EOI should as a minimum contain the information sought hereunder:
  - (a) **Particulars of the Applicant:** Listing of key elements of the identity and commercial structure of the applicant, to the extent applicable:
    - Name of Applicant (Business/Entity/Group)

- Type of Entity (sole proprietorship, private limited partnership, public limited partnership, corporation, joint venture, other)
- Date of Incorporation
- Head Office Address
- Telephone #
- Fax #
- E-Mail
- Website
- Main Business Activities
- Authorized Share Capital where applicable
- Business/Entity ownership and shareholding structure, identifying parent and subsidiary companies, where applicable
- Implementation Agreement or Concession Agreement, if any, for the project
- Shareholders' Agreement, if applicable
- Articles and By-Laws of the Single Purpose Vehicle, if created for the project
- Business/Entity Registration Certificate
- Income Tax Registration Certificate
- VAT Registration Certificate

(b) **Project Site Location:** Description of the project site location giving sufficient details to enable the RE IPP Committee to easily identify the site, including but not limited to:

- Site name
- GPS and/or geographical co-ordinates
- Nearest urban center
- Location/Division/Region

(c) **Site and Land Ownership and Control:** Indication of the site ownership and, if applicant is not the owner of the land, indication of how the project developers intend to acquire and control the site either through long term lease, buy-out, or other arrangements.

In order to assure that land is not blocked by speculators, land values on site location are not artificially increased post non-objection by the Committee, and only developers that have a serious intent and real opportunity to achieve the project are granted a non-objection letter by the Committee, the EOI must include proof that the developer has

- completed an on-site inspection,
- obtained a Letter of Approval in Principle by Land Owner (whether private or Government) that he is willing to sell or lease (for the duration of the project useful life) the land, along with indication of land value or lease payments negotiated and period of validity of such Letter, after which the land owner is free to recommit the land to another buyer or lessee.

In the event that the Letter of Approval in Principle by Land Owner expires prior to the expiration of the license issued by ECB, the developer may submit an extension of such Letter for a maximum validity of an additional one year or of the period remaining in the license issued by

ECB, whichever earlier, after which the land in question will be at the disposal of the next in line developer who submits or has submitted a Letter of Approval in Principle by Land Owner.

(d) **Technology:** Description of the technology to be employed:

- Biomass
- Solar PV
- Wind

(e) **Pre-Feasibility Study:** which means a preliminary study or collection of preliminary studies associated with the planning of a contemplated Plant and the related preliminary or advanced stage data to assess,

- the quality of the energy Resource Base to be used
- the technology to be applied
- the Installed Capacity contemplated for the Plant
- its associated capital and operating costs
- the capacity factor at which the Plant is expected to operate
- the availability and expected annual electricity sales
- the associated market the Plant will serve
- the proposed financial plan including amounts of debt, equity (and grants, if any), provided that the debt portion may not be more than 75% of Total Financing Required,
- the possible sources of finance
- the loan security arrangements contemplated, including loan guarantees, trustee arrangements, escrow accounts, assignments of rights/proceeds from project revenues associated with project agreements such as the PPA, security interests in project support guaranties, first mortgages/pledges on project assets, pledges on sponsor ownership rights over project, etc.
- the expected financial viability at the applicable REFIT, along with financial projections on the project, if any
- the environmental impact
- the economic impact
- basic information on financial advisors, if any, to assist the applicant

which together establish a sufficient basis for practitioners knowledgeable in such matters to determine that a Viable Project is very likely to be conceived, designed, planned, and executed if and when certain key parameters in the areas of technical, commercial, financial, economic, environmental, regulatory, legal, and other relevant disciplines are further investigated and properly structured.

(f) **Project Sponsors and Developers** means a brief description of the following:

- Background and experience with similar projects, Plants, and technologies
- Audited financial statements of the developer, partners, and key sponsors
- Governance and accountability arrangements

(g) **Technical Advisors/ Experts:** means an outline of the technical advisors indicating their capability and experience in similar technology development projects.

- (h) **Project Development and Implementation Plan:** means an outline of project development and implementation plan, including time schedules for major tasks and milestones, type of contract for implementation, including type of Engineering, Procurement and Construction (EPC) Contract if such is contemplated, plus contractor's experience, procurement and tendering arrangements, and project completion support and cost overrun coverage guarantees contemplated, if any.
- (i) **Environmental:** means a preliminary EIA and remedial action plan contemplated.
- (j) **Insurance** means a description of insurance arrangements contemplated during construction and during operation, if any.

### 5.3. FOREIGN INVESTOR PROVISION

- 5.3.1. Foreign investors qualify to invest under the provisions of the proposed Rules and PPA Guidelines subject to compliance with other relevant laws governing foreign investments.

### 5.4. FULL FEASIBILITY STUDY REQUIREMENT

- 5.4.1. Upon receipt of a non-objection by the RE IPP Committee, the applicant who wishes to complete negotiations of a PPA with the Offtaker to be duly signed under the provisions proposed herein, must proceed to completing (a) a full Feasibility Study<sup>12</sup> acceptable to creditors and investors who collectively can demonstrate they will provide the debt and equity financing necessary to provide the Total Financing Required to complete the project in question, and (b) an associated EIA, acceptable to all the competent authorities, as well as creditors and investors.
- 5.4.2. The applicant, as the potential Seller and thus potential party to the PPA to be signed, shall submit the full Feasibility Study and the associated EIA to the Offtaker for its determination, in its reasonable judgment and as a commercial entity about to enter as the other party to the same PPA, whether the proposed project is a Viable Project that has been established as bankable, by the identification of sufficient sources that provide the Total Financing Required and in a debt:equity ratio where the equity as a minimum is such that the ratio is 75:25.
- 5.4.3. The Offtaker may not unreasonably and without evidence to the contrary withhold determination of a Viable Project, when a project has obtained the proper license from ECB and has been proven bankable by the presence of creditors and investors ready to collectively provide the Total Financing Required.

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<sup>12</sup> This does not replace the licensing procedure and requirements but it is a parallel and necessary undertaking that is needed to make the project bankable to the investor community.

- 5.4.4. The applicant shall seek all other necessary and customary approvals for its Feasibility Study and EIA from the competent authorities, including MME, ECB, and others, as a condition precedent for the PPA.

**5.5. SUBMISSIONS AND DEADLINES**

- 5.5.1. EOIs and enquiries on REFITs should be addressed to [*designated authority*].
- 5.5.2. EOIs and enquiries may be submitted through regular mail, electronic mail, or delivered by hand.
- 5.5.3. The implementation of the REFITs is a continuous process. Investors should however note that applications will be processed and approved on a first come first served basis and that applications that are received after the attainment of the capacity targets set under Rule 10 shall not be considered.
- 5.5.4. The Developer that receives a non-objection to his EOI must reach financial closure on the proposed project before the expiration date of the license granted by ECB or the expiration of the Letter of Approval in Principle by Land Owner.

APPENDIX – REFIT COMPARISON CHARTS

