

## RULES AND REGULATIONS APPLICABLE TO OUR OPERATIONS

### Approvals

The main PRC laws and regulations applicable to the approval of power projects with foreign investment include, the Advices on Further Encouraging Current Foreign Investment (關於當前進一步鼓勵外商投資的意見), the Provisions on Guiding the Orientation of Foreign Investment (指導外商投資方向規定), the Industry Guiding Catalog of Foreign Investment (外商投資產業指導目錄), the Reform of the Investment System of the State Council (國務院關於投資體制改革的決定), the Interim Measures of NDRC for the Administration of Examining and Approving Foreign Investment Projects (國家發展和改革委員會外商投資專案核准暫行管理辦法), the Circular issued by the Ministry of Commerce on Lawful Administration and Approval Process for Foreign-invested Enterprises (商務部關於依法行政做好外商投資企業審批工作的通知) and the Notice on the Interim Measures of Zhejiang Province for the Approval and Archival Filing of Enterprise Investment Projects (浙江省企業投資項目核准和備案暫行辦法的通知).

Pursuant to resolutions passed by the Tenth National People's Congress in March 2003, NDRC was formed to replace the former State Development and Planning Commission. NDRC has the authority to review and approve new power plants, including foreign-invested power projects, and to set on-grid tariffs in accordance with applicable laws.

Under the Industry Guiding Catalog for Foreign Investment (the "Catalog") (外商投資產業指導目錄) issued by NDRC and Ministry of Commerce jointly and subject to update from time to time, business sectors are broadly classified into three categories, namely Encouraged, Restricted and Prohibited, and the rest of the sectors which are not listed in the Catalog are generally recognized as permitted category, providing indication of the PRC government's general level of acceptance to foreign participation and investment in various business sectors in China. Under the latest version of the Catalog (2007 updated version), the construction and operation of natural gas power generation facilities is classified neither under the Encouraged category nor the Restricted or Prohibited category, which means that the PRC government generally welcomes foreign investment and participation in this sector.

Foreign investment projects with a total investment amount of US\$100 million or more in the Encouraged or Permitted categories, or US\$50 million or more in the Restricted category, are subject to approval by NDRC while other foreign investment projects are only subject to approval by provincial governmental authorities.

The Ministry of Commerce or the relevant local authorities are responsible for approving the relevant joint venture contracts, articles of association of the foreign invested enterprises and other substantial changes to the foreign invested enterprises, such as changes in capital, equity transfer and consolidation. We have obtained all the necessary government approvals for Our Power Plants.

### Operation

The main PRC laws and regulations applicable to the operation of Our Power Plants include:

- (1) Overall regulatory scheme: The Electric Power Law of the People's Republic of China (中華人民共和國電力法) which became effective on 1 April 1996 and the Regulations on Electric Power Supervision and Management (電力監管條例) which became effective on 1 May 2005, both set out the regulatory framework of the power industry in the PRC.

On-grid tariffs are determined by the PRC government and all power plants in the PRC are subject to the dispatch guidelines set by respective power grid companies.

- (2) On-grid tariff: The Notice on Rectifying and Standardizing Some Relevant Issues Concerning Tariff Regulation (關於規範電價管理的有關問題的通知) which became effective on 23 April 2001 and the Interim Measures for the Administration of On-grid Tariff (上網電價管理暫行辦法) which became effective on 1 May 2005 both set out the principles for which pricing bureaus should follow in determining on-grid tariffs for power generators. For independent power providers, on-grid tariffs are set by Price Bureaus taking into consideration various factors including the economic lives of the respective power generation facilities, fuel and production costs, and applicable taxes, plus a reasonable margin and return.
- (3) Dispatch: The Regulation on the Administration of Electric Power Dispatch to Networks and Grids (電網調度管理條例) which became effective on 1 November 1993 states that such regulation is applicable to all power plants in the PRC and power providers shall generate power in accordance with the planned output allocated to them. On 2 August 2007, the State Council approved the Provisional Measures on Dispatch of Energy Saving Power Generation (節能發電調度辦法(試行)) issued by the NDRC, SERC, State Environmental Protection Bureau and Office of the National Energy Leading Group. Pursuant to such measures, the dispatch priority of power generation units is determined in the following sequence: (a) non-adjustable power generation units utilizing renewable fuels; (b) adjustable power generation units utilizing renewable fuels; (c) nuclear power generation units; (d) cogeneration units and resources comprehensive utilization power generation units; (e) gas-fired power generation units; (f) coal-fired power generation units, including cogeneration units without heat load; and (g) oil-fired power generation units.
- (4) Permit: The Regulations on the Administration of Power Business Permit 《電力業務許可證管理規定》 which was approved on 28 September 2005 and became effective on 1 December 2005 provides that entities engaging in power businesses, including power generation business, in the PRC shall obtain power business permit pursuant to the approval procedures provided therein. No entity or individual shall conduct power business prior to obtaining the required power business permit.

### **Environmental protection**

The State Environment Protection Administration Bureau is responsible for the supervision of environmental protection in, implementation of national standards for environmental quality and discharge of pollutants for, and supervision of the environmental management system of, the PRC. Environmental protection bureaus at the county level or above are responsible for environmental protection within their jurisdictions.

The “Environmental Protection Law” (中華人民共和國環境保護法), which became effective on 26 December 1989, requires entities that operate production facilities that may cause pollution or produce other toxic materials to take steps to protect the environment and establish an environmental protection and management system. The system includes the adopting of effective measures to prevent and control exhaust gas, sewage, waste residues, dust or other waste materials. Entities discharging pollutants must register with the relevant environmental protection authorities.

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## REGULATIONS RELATING TO THE PRC POWER INDUSTRY

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The “Environmental Protection Law” and the “Administrative Regulations on Environmental Protection for Construction Project” (建設項目環境保護管理條例) stipulate that prior to the construction of new facilities or expansion or transformation of existing facilities that may cause a significant impact on the environment, a report on the environmental impact of the construction project shall be submitted to the relevant environmental protection authority. The newly constructed production facilities cannot operate until the relevant department is satisfied that such facilities are in compliance with all relevant environmental protection standards.

Pursuant to the requirements of the “Environmental Protection Law”, any production facilities that could possibly cause pollution or other public hazards shall adopt measures on environmental protection and shall establish a system on environmental protection and administration. Effective measures shall be adopted to prevent and control the pollution and harm caused to the environment by the emission of exhaust air, sewage, waste residues, dust, malodorous gas, radioactive substances, noise, vibration and electromagnetic radiation. Enterprises that discharge pollutants shall register with the relevant environmental protection authority. The State Environmental Protection Administration shall formulate national standards on emission of pollutants in accordance with the national standards on environmental quality, and the State economic and technological conditions. Governments at the provincial level and of the autonomous regions and municipalities may formulate their respective local standards on the discharge of pollutants for items not specified in the national standards. The local governments may formulate local standards which are more stringent than the national ones. Pursuant to the requirements under the amended “Law on Prevention of Water Pollution of the PRC” (中華人民共和國水污染防治法), which became effective on 1 June 2008, “Law on Prevention of Air Pollution of the PRC” (中華人民共和國大氣污染防治法), which became effective on 1 September 2000 and “Administrative Regulations on Levy and Utilisation of Sewage Charge” (排污費徵收使用管理條例), which became effective on 1 July 2003, enterprises which discharge water or air pollutants shall pay discharge fees pursuant to the types and volume of pollutants discharged. The discharge fees are calculated by the local environmental protection authority which shall review and verify the types and volume of pollutants discharged. Once the discharge fees have been calculated, a notice on payment of discharge fees shall be issued to the relevant enterprises.

In accordance with the “Law on Prevention of Environmental Pollution Caused by Solid Waste of the PRC” (中華人民共和國固體廢物污染環境防治法), which became effective on 1 April 1996, entities and individuals collecting, storing, transporting, utilising, or disposing of solid waste shall take precautions against the spread, loss, and leakage of such solid waste or adopt such other measures for preventing such solid waste from polluting the environment.

The penalties for any breach of the environmental protection laws vary from warnings and fines to administrative sanctions, depending on the degree of damage. Any entity whose construction projects fail to satisfy the requirements of pollution prevention may be ordered to suspend its production or operation and be subject to a fine. The responsible person of the entity may be subject to criminal liabilities for serious breaches resulting in significant damage to private or public property or personal death or injury.

### **Taxation**

#### *Income tax*

Prior to 1 January 2008, income tax payable by foreign-invested enterprises in the PRC was governed by the Foreign-Invested Enterprise and Foreign Enterprise Income Tax Law of the PRC

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## REGULATIONS RELATING TO THE PRC POWER INDUSTRY

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(中華人民共和國外商投資企業和外國企業所得稅法) (“FIE Tax Law”) promulgated on 9 April 1991 and became effective on 1 July 1991 and the related implementation rules. According to the FIE Tax Law and the relevant implementation rules, foreign-invested enterprises (engaging in the production of goods/services with an expected business life of over 10 years) were to enjoy full exemption from income tax for two years from the year of achieving profitability, and then enjoy a 50% discount in income tax for following three years, that is the third to fifth year from the year of achieving profitability. Foreign-invested enterprises operating in special economic development zones, especially those involving in areas such as energy, transportation, port infrastructure and other State encouraged projects, are subject to income tax rate of 15% (before any exemption). From January 1999, under State Council’s Circular on Expanding the Scope of Income Tax Preferential Treatment for Enterprises with Foreign Investment Engaging in Energy and Transportation Infrastructure Projects (國務院關於擴大外商投資企業從事能源交通基礎設施項目稅收優惠規定適用範圍的通知), the 15% preferential income tax rate became applicable to enterprises operating in these sectors across the whole of China and not just in special economic zones.

However, under the Enterprise Income Tax Law of the PRC (中華人民共和國企業所得稅法) (“New Tax Law”), which was promulgated on 16 March 2007, income tax rates applicable to both domestic and foreign-invested enterprises were unified at 25% effective from 1 January 2008. Enterprises which enjoyed income tax rates of lower than the standard rate of 33% are given a five-year transitional period. Such enterprises will continue to enjoy the lower tax rate before they are gradually subject to the tax rate of 25% within the transitional period. In particular, enterprises which were subject to an income tax rate of 15% would be subject to an income tax rate of 18% in 2008, increasing to 20% in 2009, 22% in 2010, 24% in 2011, and 25% in 2012. Enterprises which are enjoying two years of 100% exemption and three years of 50% reduction on tax payments may continue to enjoy such exemption and reduction until the term of such privilege expires.

### *Value-added tax*

Pursuant to the Provisional Regulations on Value-Added Tax of the PRC (中華人民共和國增值稅暫行條例) and its implementation rules, both of which were amended in late 2008 and became effective from 1 January 2009, all entities or individuals in the PRC engaging in the sale of goods, the provision of processing services, repairs and replacement services, and the import of goods are required to pay value-added tax (“VAT”). VAT payable is calculated as “output VAT” minus “input VAT”. Currently, Our Power Plants are subject to output VAT rate of 17% for power sales and input VAT rate of 13% for purchase of natural gas.