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## REGULATORY ENVIRONMENT

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### OVERVIEW

We operate our wind power and natural gas businesses in the PRC. These industries are subject to certain regulations imposed by the PRC government. These regulations govern different aspects, including project approvals, power generation, electricity transmission and dispatch, on-grid tariffs, pricing of natural gas, operations of city gas pipeline networks and environmental protection and safety. In addition, our operations are subject to general regulations in the PRC besides the industry-specific requirements, such as regulations on foreign investments, foreign exchange control, labor protection and taxation, etc.

### Natural Gas Industry

#### *Principal Regulatory Authorities*

The NDRC is responsible for the formulation of mid or long-term energy plans, development and implementation of policies and regulations for the industry and determination of prices for natural gas. Natural gas pipeline construction projects are approved by the NDRC or different levels of the local DRCs depending on the size of the projects.

The NEA is primarily responsible for the formulation of energy development plans and annual directive plans; approving major energy-related projects and facilitating the implementation of sustainable development of energy strategies; coordinating the development and utilization of renewable energies and new energies; and organizing matters relating to energy conservation and comprehensive utilization as well as environmental protection for the energy industry.

The MOHURD (formerly known as the MOFCON) and local construction authorities at or above the county level are responsible for supervising city gas production and operation.

The GAQSIQ and the administrative authorities of Quality and Technical Supervision at both provincial and municipal levels are responsible for the registration of the use of long-distance transmission pipelines, public pipelines and industrial pipelines.

The SAWS is responsible for supervising production safety of our natural gas operations.

#### *Major Laws and Regulations*

The natural gas transmission business mainly involves long-distance transmission pipelines, city gas pipeline networks and city gas. The key applicable laws and regulations include Policies on Natural Gas Utilization (天然氣利用政策), Regulations on Protection of Petroleum and Natural Gas Pipelines (石油天然氣管道保護條例), Administrative Measures on City Gas (城市燃氣管理辦法), the Interim Regulations on Supervision and Management of Safety of Petroleum and Natural Gas Pipelines (石油天然氣管道安全監督與管理暫行規定), and Notice on the Adjustment of Natural Gas Price.

#### *Industry Policies*

On August 30, 2007, the NDRC promulgated Policies on Natural Gas Utilization pursuant to which the use of natural gas is regulated on a demand basis. Under the policy, the usage of natural gas is categorized into four main areas, namely city gas, industrial fuel, power generation by natural gas, and chemical engineering using natural gas. Balancing factors such as its social, environmental and economic benefits, and the different profiles of its users, natural gas utilization is divided into the following categories: prioritized, permitted, restricted and prohibited.

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## REGULATORY ENVIRONMENT

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### *Natural Gas Pipelines Facilities*

The State Council promulgated and implemented the Regulations on Protection of Petroleum and Natural Gas Pipelines on August 2, 2001 to regulate the safe operation of natural gas pipelines and their ancillary facilities, and to maintain public safety.

### *Management of City Gas*

On December 23, 1997, the MOFCON promulgated the Administrative Measures on City Gas, which regulate the planning, construction and operation of city gas, the manufacturing and sale of city gas appliances and the utilization and safety management of city gas. According to the Administrative Measures on City Gas, the construction administrative authority under the State Council is responsible for the overall management of city gas in the PRC, while the construction administrative authorities under local people's governments above the county level are responsible for the management of city gas in their respective regions. Any enterprise engaged in the business of city gas supply in the PRC shall obtain an City Gas Enterprise Qualification Certificate (城市燃氣企業資質證書) from the local construction authority prior to the commencement of its city gas supply business.

### *Gas Operation License*

In November 2002, the State Council decided to revoke the administrative examination and approval for Gas Enterprise Qualification Certificate pursuant to the Decision of the State Council to Revoke the First Batch of Projects Subject to Administrative Examination and Approval (國務院關於取消第一批行政審批項目的決定). In June 2004, the State Council promulgated the Administrative Licensing Decision. Pursuant to the Administrative Licensing Decision, a newly established city gas enterprise that supplies city gas in the PRC is required to obtain a Gas Operation License (燃氣經營許可證) from the local construction authority.

In October 2004, pursuant to the Administrative Licensing Law and the Administrative Licensing Decision, the MOFCON promulgated Condition Provisions. Under the Condition Provisions, in order to obtain a Gas Operation License from the local construction authority, any newly established city gas enterprise engaged in piped gas distribution shall satisfy the following conditions:

- the construction project shall be in compliance with the overall planning of the city and its gas supply system and meet any standards set by the local authorities upon completion and subsequent inspection;
- the enterprise shall have a stable city gas supply and the quality of the city gas most meet relevant standards;
- the production, transmission and distribution, storage, filling and supply facilities shall meet the required standards and satisfy fire prevention and construction quality requirements;
- the enterprise shall have professionally trained and qualified city gas operators;
- the enterprise shall have a comprehensive operational management system and safety control policies;
- the enterprise shall maintain complete records of infrastructure construction, production, equipment, materials and safety;
- the enterprise shall have a sound emergency response plan, together with an emergency team, rescue and repair staff, equipment, facilities and transportation vehicles that correspond to the scale of city gas distribution;

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## REGULATORY ENVIRONMENT

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- the enterprise shall obtain a safety appraisal report from the relevant appraisal agency and satisfy operational safety requirements;
- the enterprise shall have registered capital and professional technicians that correspond to the scale of operations, solvency and level of risk aversion; and
- the enterprise shall have taken industrial injury and social insurance for the employees in compliance with the law and paid the premium for the employees.

### ***License for Pressure Containers***

In July 2004, GAQSIQ issued the Pressure Container Measures. Pursuant to the Special Equipment Measures and the Pressure Container Measures, every pressure container is a special equipment, and the entities and individuals using the pressure container are required to obtain a Permit for the Use of Pressure Container (壓力容器許可證) from the Bureau of Quality and Technical Supervision.

### ***Right of Franchise Operation***

In May 2004, the MOFCON issued Measures on Franchise Operations to promote the market-oriented operation of the municipal public utilities, regulate the franchise operation system, including city gas distribution industry in the piped cities. Pursuant to the Measures on Franchise Operations, the local governments normally grant the franchise right for the exclusive operation of city gas supply in specified regions of the counties and cities.

Depending on the terms of the franchise granted, the specified region can be the whole county or city or part of the county or city. The local utility authorities at the county or city level would implement the Licensed Operation Measures as authorized by the relevant local governments. Pursuant to the Administrative Measures for the Franchise Operation of Public Utility issued by some local governments, the licenses for the operation of public utility can be granted through public bidding process or other means permitted by law. The rights and obligations of the city gas supplier that becomes the successful bidder are set out in the relevant franchise operation agreements. The franchise operation period normally will not exceed 30 years.

In September 2004, the MOFCON published the standard format of a franchise operation contract with respect to piped city gas supply for guidance.

The format of a licensed operation contract shall contain provisions regarding the following:

- grant, revocation and termination of the licensed operation;
- construction, maintenance and renewal of the city gas facilities;
- safety of city gas supply;
- quality of the city gas supply and standard of services;
- fees;
- default liabilities; and
- resolution of disputes.

### ***Safety Production License***

Pursuant to the Supplementary Notice Regarding the Granting of Safety Production License to Oil and Natural Gas Enterprises (關於石油天然氣企業安全生產許可證頒發工作的補充通知) issued by the SAWS on

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## REGULATORY ENVIRONMENT

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December 9, 2004, any enterprise engaged in onshore oil exploration and its subordinate production entities shall apply for the Safety Production License for Onshore Oil and Natural Gas from the local provincial SAWS. The tertiary production entities of oil and natural gas enterprises, including production entities engaged in the exploration, storage, transportation and engineering technology services, shall undertake a safety assessment prior to the application for Safety Production Licenses.

### *Pricing of Natural Gas*

Pursuant to the requirements of the Notice of the National Development and Reform Commission on the Reform of the Mechanism for Setting Natural Gas Ex-Plant Price and the Appropriate Raising of Natural Gas Ex-Plant Price in the Near Term (關於改革天然氣出廠價格形成機制及近期適當提高天然氣出廠價格的通知) issued by the NDRC on December 23, 2005, the pricing authority shall implement a uniform natural gas price that shall follow the government guided price. Prices shall be fixed for three categories of gas, namely gas for fertilizer production, gas for direct industrial uses and city gas. City gas includes gas for residential uses, gas for commercial uses and gas for small-scale industrial users of the city gas companies. The ex-plant price of natural gas is divided into two-tier prices. The benchmark ex-plant price of natural gas is adjusted once every year.

On November 8, 2007, the NDRC published the Notice on the Adjustment of Natural Gas Price, which requires the suppression of the over-consumption of natural gas by industrial users, the irrational development of gas-powered automobiles, and the reduction of the price gap between natural gas and alternative energy sources. The main points are: (a) appropriately increase the benchmark ex-plant price of natural gas for industrial uses; (b) relax the control of the ex-plant price of natural gas supplied to LNG-production enterprises; and (c) rationalize the price difference between natural gas and gasoline for automobiles.

On May 31, 2010, the NDRC issued the NDRC Price Increase Notice, effective as of June 1, 2010 to promote energy conservation, adjust the price difference between natural gas and other alternative energy resources and optimize the reasonable allocation of natural gas resources effective. The key focuses are as follows: (a) to increase the ex-plant price of domestically produced natural gas and perfect the relevant pricing policies, including increasing the benchmark ex-plant prices of domestically produced natural gas appropriately, abolishing the “dual-track” pricing system and expanding the pricing floating range; (b) to reach reasonable sales price of natural gas by allowing natural gas purchasers and sellers to contractually agree on a sales price not exceeding 110% of the new benchmark ex-plant prices; and (c) to enhance the relevant ancillary measures. On June 2, 2010, the Hebei Provincial DRC issued the Notice on the Adjustment of Natural Gas Prices and permitted all natural gas distributors in Hebei Province to adjust their natural gas sales price in Hebei Province effective retroactively on June 1, 2010 in accordance with their costs of purchase.

On August 20, 2010, the Hebei Provincial Price Control Bureau issued and implemented the Trial Measures of Hebei Province for the Administration of Price of Natural Gas (for Trial Implementation) (Ji Jia Guan [2010] No. 44), the main objective of which is to govern the administration of pricing natural gas in Hebei Province, and to protect the legal interest of operators and consumers. Among others, the key focuses are (a) the price of natural gas consists of costs, profits and tax payments. Costs represent manufacturing costs, administrative expenses, financial costs and sales expenses arising from natural gas operating enterprises. Profits represent reasonable gains which should be received by natural gas operating enterprises in the ordinary course of business, and the profit margin on net assets of the enterprise shall not exceed 8% of the determined level. Tax payments represent taxes payable by natural gas operating enterprises in accordance with national tax laws; (b) the pricing of natural gas relies on a combination of government fixed price and government guided price, and is managed by classification according to its operating mode; and (c) to establish a price linkage mechanism between the natural gas sales price to households

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## REGULATORY ENVIRONMENT

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and the natural gas price to upstream customers. Prior to implementing the price linkage mechanism for gas for residential uses, Hebei province is required to hold hearings on the initial price together with natural gas price linkage program in determining the initial price. If it is required to start implementing the price linkage mechanism after the hearings, there is no need to hold a price hearing again, and the pricing shall be published by the pricing authority of cities that have districts, and counties (cities) with expanded authority to the public upon verification according to the established procedure.

### *Taxation*

#### Enterprise Income Tax Law

Prior to January 1, 2008, under the Old Enterprise Income Tax Law, enterprises established in the PRC were generally subject to an enterprise income tax rate of 33 %. However, entities that satisfied certain conditions enjoyed preferential tax treatment. In accordance with the Law of the People's Republic of China on the Income Tax of Foreign Invested Enterprises and Foreign Enterprises effective until December 31, 2007, any foreign invested manufacturing enterprise that operated for a period not less than 10 years was exempt from paying enterprise income tax for the first two years starting from the first profit making year, and was allowed a 50 % reduction in its enterprise income tax for the third to fifth years.

The New EIT Law and the EIT Law Implementation Rules, which became effective on January 1, 2008, imposed a single uniform enterprise income tax rate of 25 % on all PRC enterprises, including foreign invested enterprises, and eliminated or revised most of the tax exemptions, reductions and preferential treatment available under the previous tax laws and regulations. On December 26, 2007, the State Council issued Circular 39. With effect from January 1, 2008, enterprises that previously enjoyed the regular tax exemptions, reductions and preferential treatment, such as “two years of exemption and three years of 50 % reduction” of enterprise income tax and “five years of exemption and five years of 50 % reduction” of enterprise income tax would continue to enjoy the preferential treatment according to the preferential measures and terms prescribed in the original tax laws, administrative regulations and the related documents until the expiration of the original terms. The terms of preferential treatment for enterprises that did not enjoy preferential treatment due to the lack of profit would commence in 2008.

In addition, pursuant to the Notice on Various Issues Regarding the Income Tax Deduction and Exemption of Foreign Invested Enterprises and Foreign-owned Enterprises by Purchasing Domestic Manufactured Equipment promulgated by MOF and SAT on January 14, 2000, a foreign invested enterprise is permitted to use 40% of the purchase costs of domestically manufactured equipment to offset the amount by which its income tax in the year of purchase exceeds the income tax paid in the previous year. The enterprise is allowed to carry forward such tax credits for four years.

#### VAT

In addition, effective from January 1, 2009, input VAT of certain equipment purchases is deductible from the output VAT. Pursuant to Notice on Several Questions on the Notion-wide VAT Reform (Cai Shui [2008] No.170) (關於全國實施增值稅轉型改革若干問題的通知(財稅[2008]170號)), deductible input VAT on equipment purchases refers to the VAT actually incurred on or after January 1, 2009 which is endorsed in the VAT deduction certificate issued on or after January 1, 2009 or calculated according to such VAT deduction certificate.

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## REGULATORY ENVIRONMENT

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### **Regulation on the Wind Power Industry**

#### *Major Regulatory Authorities*

The NDRC and related provincial DRCs are responsible for approving wind power investment projects of corresponding scales, formulating relevant regulations and rules governing the operation of power plants, setting electricity prices and reviewing and approving applications for clean development mechanism projects.

The SERC and regional electricity regulatory bureaus are mainly responsible for the supervision of operations and legal compliance of the electric power industry, granting and administrating electric power business permits, and regulating the electric power market.

The MEP and the local environmental protection authorities at all levels are responsible for approving appraisal documents on environmental impacts of wind power projects and inspecting environmental protection facilities of wind power projects.

The SAWS is responsible for supervising the operation of power generation and the work safety of project constructions, and for formulating certain safety regulations.

The MOFCOM, together with the NDRC and the Ministry of Finance, approves the preferential taxation treatments and allocates special fund to encourage the development of renewable energy (including wind energy), as well as encouraging energy saving and rational development and utilization of energy.

The SAT is responsible for formulating and implementing taxation policies and regulations.

#### *Major Laws and Regulations*

With regard to project approvals, power generation, transmission and dispatch of electricity and on-grid tariffs in connection with the wind power generation industry, the PRC has established a corresponding regulatory and control system. The major laws and regulations involved include the Renewable Energy Law as amended, the Electric Power Law, the Regulations on Supervision of Electric Power (電力監管條例), the Electric Power Business Permit Provision, the Regulations on the Administration of Electric Power Dispatch to Networks and Grids (電網調度管理條例), the Interim Measures for the Administration of On-grid Tariff (上網電價管理暫行辦法), the Power Generation Provisions, the Price and Cost Sharing Measures, the CDM Measures, the Regulatory Measures on Full Purchase of Renewable Energy by Grid Enterprises (電網企業全額收購可再生能源電量監管辦法), the Measures on Power Dispatch and Energy Saving (For Trial Implementation) (節能發電調度辦法(試行)), and the Interim Measures on Administration of Designated Fund for the Development of Renewable Energy (可再生能源發展專項資金管理暫行辦法).

#### *Policies on the Wind Power Generation Industry*

Pursuant to the provisions of the Renewable Energy Law implemented on January 1, 2006, renewable energy includes non-fossil fuel based energy sources, such as wind energy, solar energy, hydropower, biomass energy, geothermal energy and ocean energy. The law stipulates the regulatory policies on the development and utilization of renewable energy.

At the 12th meeting of the Standing Committee of the Eleventh National People's Congress, which was convened on December 26, 2009, the Decision on the Amendment on the Renewable Energy Law of the People's

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## REGULATORY ENVIRONMENT

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Republic of China was reviewed and promulgated into law, effective on April 1, 2010. The amendments amend and supplement the original Renewable Energy Law in the following major areas:

- to stipulate the implementation of the national policy of guarantee purchase of all power generated from renewable energy sources, and to stipulate specific measures regarding priority dispatch support for power grid companies and to the guarantee purchase program.
- to supplement and specify provisions regarding the establishment of a renewable energy development fund, the sources of which include specially allocated funds from the annual national financial budget and additional revenue derived from renewable energy power tariff surcharges, and to expand the use of such funds, such as power tariff compensations.

Pursuant to the Electric Power Law which came into effect on April 1, 1996 and the Regulations on Supervision of Electric Power which came into effect on May 1, 2005, the main objective of the Electric Power Law is to protect the legal interest of investors, operators and users, and to ensure the safety of electricity operation. The Electric Power Law also states that the PRC government encourages the investment in electric power industry by domestic and foreign business entities and individuals, and regulates those investment activities. The Regulations on Supervision of Electric Power contain regulatory requirements on various aspects of the electric power industry, including, among others, the granting and administration of electric power business permits, regulation of power plants and grid enterprises and the imposition of fines for violations of the regulatory provisions. As of the Latest Practicable Date, we and our PRC legal adviser, Jiayuan Law Firm, were not aware of any changes in the PRC government's favorable policies on the wind power generation business.

### *Electric Power Business Permit*

Pursuant to the Electric Power Business Permit Provisions promulgated by SERC which came into force on December 1, 2005, the PRC power industry adopted a market-access permit system.

Pursuant to the Electric Power Business Permit Provisions, unless under other special circumstances prescribed by the SERC, any unauthorized entities or individuals are not allowed to engage in electric power business (including power generation, transmission and supply) without obtaining an electric power business permit. Application for an electric power business permit for power generation shall comply with the following requirements:

- the construction of power generation projects have been approved or verified by relevant competent authorities;
- power generation facilities are capable of power generation and operation; and
- power generation projects have been in compliance with the relevant environmental protection requirements and regulations.

According to the requirements of SERC, for power generation projects completed and commenced production after December 1, 2005, the electric power business permit shall be obtained in a timely manner. For all the power plants with construction completed by July 31, 2006, the electric power business permits shall be obtained by late 2006. For all power plants with construction completed after August 1, 2006, together with their existing power generation projects, all the permits shall be obtained within three months from the commencement of operation.

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## REGULATORY ENVIRONMENT

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According to the requirements of SERC, application for the permits of newly constructed power generating units shall be submitted prior to completion and inspection, and grid-connection operation is, in principle, not allowed without obtaining the permits.

### *Preliminary Works*

Pursuant to the requirements of the Notice Relating to the Requirements of Preliminary Works of Wind Power Project (Fa Gai Ban Neng Yuan [2004] No. 29) (《關於風電前期工作有關要求的通知》(發改辦能源[2004]29號)) issued by NDRC on January 6, 2004, the preliminary works of wind power project include three parts, namely assessment of wind energy resources, site selection for wind farms and feasibility study for wind farms. The pre-feasibility study for wind farms should be conducted by project and the other two works should be conducted by province. The expenditures on preliminary works of wind power project will be financed by the state and local governments. The state will grant a fixed amount subsidy for the expenditures on preliminary works of wind power project.

The Interim Measures on Administration of Preliminary Works of Wind Power Project (Fa Gai Ban Neng Yuan [2005] No. 899) (《風電場工程前期工作管理暫行辦法》(發改辦能源[2005]899號)) issued by NDRC on May 9, 2005, include requirements on the mechanism of administrating preliminary works of wind farms projects.

Pursuant to the requirements of the Measures on the Use of Construction Land and Administration of Environmental Protection of Wind Power Project (《風電場工程建設用地和環境保護管理暫行辦法》) issued by NDRC, Ministry of Land and Resources, State Administration of Environmental Protection on August 9, 2005, land and resources management departments at the provincial level should be responsible for the pre-review of construction land for wind power projects, and the implementation of an environment impact assessment policy for wind power projects.

Pursuant to the requirements of the Measures on Administration of Preliminary Works of Wind Power Concession Project (《風電特許權項目前期工作管理辦法》) issued by NDRC in 2003, the preliminary works of wind power concession projects include wind energy resources assessment, site selection for wind farms and pre-feasibility study for wind farms. NDRC is responsible for the administration of the preliminary works of national wind power concession projects, and the Planning Commission (Development and Reform Commission) of each province (district, city) is responsible for the administration of the preliminary works of wind power concession projects in its respective region.

The Notice on Canceling the Requirement of Localization Rate of a Turbine's Components Purchased for a Wind Power Project (國家發改委關於取消風電工程項目採購設備國有化率要求的通知) issued by the NDRC on December 25, 2009 cancelled the previous requirement that at least 70% of a turbine's components (in terms of purchase value) used by a wind farm must be manufactured in the PRC.

### *Project Approvals*

In accordance with the Decision on the Reform of Investment System (關於投資體制改革的決定), the Interim Measures on the Examination and Approval of Enterprise Investment Projects (企業投資項目核准暫行辦法), the Interim Measures on the Administration of the Examination and Approval of Foreign Invested Projects (外商投資項目核准暫行管理辦法) and the Notice Regarding the Strengthening and Regulating of the Administration of Newly-commenced Projects (關於加強和規範新開工項目管理的通知), the construction of a wind power project may only commence after obtaining government approvals and requisite



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## REGULATORY ENVIRONMENT

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permits, including project approvals, site-selection and planning permits, pre-approval and approvals of project sites, environment impact assessment approvals, and construction permits or commencement reports).

In accordance with the requirements of the Power Generation Provisions promulgated and effective on January 5, 2006, wind power generation projects with installed capacity of 50 MW or above must be approved or verified by the NDRC. Other wind power generation projects must be approved or verified by provincial DRCs which shall then report to the NDRC for filing.

### *Dispatch*

All electric power generated in China is dispatched through power grids, except for that generated by facilities not connected to a grid. Distribution of power to each grid is administered by the local electricity dispatch companies. These companies are responsible for the administration and dispatch of planned output of those power plants connected to the grid.

The Dispatch Regulations promulgated by the State Council, which came into force on November 1, 1993, regulate the operation of dispatch companies. Pursuant to the Dispatch Regulations and the Measures on the Implementation of the Regulations on the Administration of Electric Power Dispatch to Networks and Grids that came into force from October 11, 1994, the electricity dispatch companies shall be established at five levels: national dispatch companies, dispatch companies of the interprovincial (autonomous region and municipality directly under the Central Government) power grid, dispatch companies of the provincial power grid, dispatch companies of the power grid of municipalities under provinces and dispatch companies of the county power grid. On a daily basis, each power plant receives from local dispatch companies an estimated hour-by-hour output schedule for the following day that is prepared on the basis of estimated demand, weather conditions and other factors.

The dispatch companies must dispatch electricity in compliance with electricity consumption schedules, which are generally determined according to the following factors:

- power supply agreements entered into between a power grid and large or major electricity customers, which take into account the electricity generation and consumption plans formulated annually by the government;
- dispatch agreements entered into between a dispatch company and each power plant covered by the dispatch company;
- grid-connection agreements between power grids; and
- the actual conditions of grids, including equipment capacities and safety reserve margins.

### *On-grid Tariffs*

Since coming into force in 1996, the Electric Power Law has set forth the principal requirements for the determination of power tariffs. Tariffs are to be formulated to provide reasonable compensation for costs and a reasonable return on investment, to be calculated according to tax laws, to allocate expenses fairly and to promote the construction of power projects. The on-grid tariffs for planned output and excess output are subject to an annual review and approval process involving the NDRC and the provincial pricing bureaus.

In July 2003, the State Council approved the Power Tariff Reform Plan (電價改革方案). The plan stated that the long-term objective of the reform was to establish a standardized and transparent power tariff management system.

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## REGULATORY ENVIRONMENT

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On March 28, 2005, the NDRC promulgated the Provisional Measures for the Administration of On-grid Tariff (上網電價管理暫行辦法), which became effective on May 1, 2005. The Measures provide regulatory guidance for the Power Tariff Reform Plan. For power plants within the regional grids that have not implemented competitive bidding on-grid tariff-setting mechanisms, on-grid tariffs will be set and announced by relevant pricing bureaus based on production costs plus a reasonable investment return. For power plants within the regional grids that have implemented competitive bidding on-grid tariff-setting mechanisms, on-grid tariffs are two-fold: (i) a capacity tariff determined by the NDRC based on the average investment cost of the power plants competing within the same regional grid and (ii) a competitive tariff determined through the competitive bidding process.

The Measures also specifically stipulate that new energy and renewable energy enterprises engaged in business such as wind power generation and geothermal power generation will not take part in the competitive-bidding process. Grid enterprises will have the priority to purchase the power output at the price determined by the government or a bidding price. The government stipulates the proportion of new energy and renewable energy in the power delivered to grid by power supply enterprises in a timely manner in order to establish specialized and competitive markets for new energy and renewable energy.

### *The Principles of Guarantee Purchase and Dispatch Priority*

Pursuant to the requirements of the Renewable Energy Law, grid enterprises shall enter into grid-connection agreements with renewable power producers that have been approved or have made filings with relevant authorities to purchase all the on-grid electricity generated by renewable energy grid-connection power projects within the coverage of the grid, and to provide grid-connection services and related technical support to renewable energy companies.

On August 2, 2007, the General Office of the State Council forwarded the Measures on Power Saving Dispatch of Energy (For Trial Implementation) (節能發電調度辦法(試行)), which is aimed at optimizing the efficient use of natural resources and encouraging energy saving to achieve sustainable development. Pursuant to these Measures, renewable energy power producers are entitled to the highest dispatch priority if they use wind power as their energy source. The dispatch priority of power generation units is determined according to the following sequence: (a) non-adjustable power generation units utilizing renewable energy; (b) adjustable power generation units utilizing renewable energy and waste-for energy generation units in compliance with environmental protection requirements; (c) nuclear power generation units; (d) coal-fired cogeneration units with heat load; (e) natural gas and gas-fired power generation units; (f) other coal-fired power generation units (including cogeneration units without heat load); and (g) oil-fired power generation units.

In addition, pursuant to the Regulatory Measures on the Full Purchase of Renewable Energy Power by Grid Enterprises (電網企業全額收購可再生能源電量監管辦法), which became effective on September 1, 2007, the SERC and its branches shall supervise grid companies regarding their satisfaction of the obligations of guarantee purchase and priority dispatch. Grid companies that fail to satisfy these obligations and cause economic losses to the renewable energy power generation companies must compensate for the losses and remedy their failure within 15 days after confirmation by power regulatory authorities. Otherwise, they may be fined a sum not more than twice the amount of the economic losses suffered by the renewable energy power generation companies.

### *Price and Cost Sharing Program*

Pursuant to the Renewable Energy Law and the Provisions on the Administration of Power Generation from Renewable Energy (可再生能源發電有關管理規定), the NDRC shall determine the on-grid tariffs for renewable energy power generation projects based on various principles, including the features of power generated from

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## REGULATORY ENVIRONMENT

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different types of renewable energy, different geographic locations, and the need to facilitate the development and use of renewable energy in a commercially reasonable way.

The Price and Cost Sharing Measures, which were promulgated by the NDRC and became effective on January 1, 2006, provides detailed rules for the determination of renewable energy tariffs. According to the Price and Cost Sharing Measures, there are two types of on-grid tariff for electricity generated from renewable energy: “government fixed price” and “government guided price.”

- The wind power projects for which approvals from the NDRC or provincial DRCs are obtained after January 1, 2006, the on-grid tariff is the “government guided price.” On-grid tariffs of concession projects are determined through public bidding and then approved by the government.
- In addition, pursuant to the Price and Cost Sharing Measures, for renewable energy power projects approved after January 1, 2006, the resulting difference in cost that grid companies pay compared to the cost calculated on the basis of the average on-grid tariff of coal-fired power generation will be passed to end-users. In this regard, the Cost Sharing Program states that: (i) the difference of on-grid tariffs between renewable energy power and desulfurized coal-fired power, (ii) the difference between costs relating to the operation and the maintenance of the public and independent renewable energy power system invested or subsidized by the State and average sales tariff of the local provincial grids, and (iii) the grid-connection fees for renewable energy power projects will be borne by end-users within the coverage of the grid enterprises at or above the provincial level by paying a tariff surcharge. According to notices relating to on-grid tariff adjustments in various regions of the PRC issued by the NDRC, the renewable energy on-grid tariff surcharge has increased to RMB 4.0 per MWh starting from November 20, 2009.

On July 20, 2009, the NDRC issued the Circular regarding the Improvement of On-grid Tariff Policy of Wind Power (關於完善風力發電上網電價政策的通知) which became effective on August 1, 2009. The Circular applies to all onshore wind power projects approved thereafter. In accordance with this Circular, the on-grid tariff determined based on a “government guided price” discussed above has been replaced by the geographically unified tariff, a form of government-fixed price. Specifically, the PRC is categorized into four zones, and all onshore wind power projects in the same zone apply the same benchmark on-grid tariff (including VAT) (RMB 0.5100/kWh, RMB 0.5400/kWh, RMB 0.5800/kWh or RMB 0.6100/kWh respectively) applicable to that zone. For wind farms spanning across areas with different benchmark on-grid tariffs, the higher tariff applies. The new on-grid tariffs will continue to be subsidized by on-grid tariff premiums enjoyed by renewable energy power projects in general.

The above Circular also stipulates the continuous implementation of the wind power tariffs sharing program as described above.

### **CDMs**

CDM is an arrangement under the Kyoto Protocol to the UNFCCC, which allows industrialized countries with a greenhouse gas emission reduction commitment to invest in greenhouse gas emission reduction projects in developing countries in order to earn emission credits. Investors from industrialized countries can use these emission credits to offset against their domestic emission reduction targets or sell credits to other parties. CDM provides an alternative to more expensive emission reductions in their own countries.

The PRC approved and signed the UNFCCC in 1993 and the Kyoto Protocol in 2002, but with no binding obligation to meet emission reduction targets. The office of National Climate Change Coordination Committee is

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## REGULATORY ENVIRONMENT

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responsible for policy-making and general coordination in the PRC, while the National CDM Board is responsible for the examination and approval of CDM projects carried out in the PRC.

On October 12, 2005, the NDRC, the MOST and the MFA and MOF jointly promulgated the CDM Measures. The CDM Measures set forth general rules and specific requirements for the review on, and approval of CDM projects, including, among others, the following:

- Only companies wholly-owned or controlled by Chinese parties may carry out CDM projects in the PRC. Consequently, a company controlled by foreign parties is not qualified to apply for PRC government's approval for a CDM project.
- The approval procedures of CDM projects include (i) a review by experts from relevant organizations appointed by the NDRC, (ii) an examination and approval of applications for a CDM project by the National CDM Board and (iii) approval jointly by the NDRC, MOST and MFA, with the approving letter issued by the NDRC.
- The National CDM Board will review the lowest price for the sales of emission credits in the PRC.
- For CDM projects approved on and after October 12, 2005, (i) emission reduction resources are owned by the PRC government, (ii) the emission credits generated from CDM projects are owned by the PRC project owners, (iii) the PRC government, based on the types of CDM projects, imposes a levy on the proceeds derived from the sales of emission credits under CDM projects at different rates. With respect to wind power projects that develop and utilize renewable energy and are encouraged by the government policies, only 2 % of its proceeds is payable to the PRC government.

### ***Renewable Energy Development Fund and Designated Funds***

According to the Renewable Energy Law (as amended from time to time), the national treasury has to establish a renewable energy development fund, the sources of which include the designated funds allocated by the state during the financial year and the renewable energy tariff surcharge levied according to laws. In addition, to cover the difference between grid companies and public and independent renewable energy power systems invested or subsidized by the state, the renewable energy development fund is also used to support, among others, scientific and technical research, establishment of standards and model projects for the development and utilization of renewable energy.

The Interim Measures on Administration of Designated Fund for the Development of Renewable Energy (可再生能源發展專項資金管理暫行辦法), which became effective on May 30, 2006, states that MOF will allocate funds from the PRC central financial budget to support the development and utilization of renewable energy. The MOF will also be responsible for granting the final approval for applications for funding support submitted by entities or individuals. The MOF may provide grants for nil consideration (primarily to unprofitable renewable energy projects that provide substantial public benefit) or subsidized loans to renewable energy projects that satisfy the credit conditions and are within the descriptions in the Guidance Catalogue.

### ***Safety Production***

The Safety Production Law of the People's Republic of China (中華人民共和國安全生產法), which became effective on November 1, 2002, is the principal law governing the supervision and administration of the safety production of power projects. In accordance with the Measures on Supervision and Administration of Safety Power Production (電力安全生產監管辦法) promulgated by the SERC in March 2004, power plants shall maintain their

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## REGULATORY ENVIRONMENT

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safety operations in accordance with requirements set by the regional grid in which they are located. Power plants are required to report to the SERC, the SAWS and local government authorities within 24 hours any serious and extraordinary accidents that cause worker fatalities, grid accidents, damage to equipment, collapse of power plants and fire hazard.

### *Tendering and Bidding*

Under the Bidding Law of the People's Republic of China (《中華人民共和國招標投標法》) effective on January 1, 2000 and relevant regulations, bidding process is mandatory within China with respect to projects such as large-scale infrastructure and public utilities relating to social public interests and public security which, pursuant to Regulations for Tendering Extension and Scope Standards of Engineering Construction Projects (《工程建設項目招標範圍和規模標準規定》) promulgated by the former State Development Planning Commission on May 1, 2000, refer to such infrastructure projects as electric power and new energy.

### *Taxation*

Enterprises engaged in renewable energy in the PRC enjoy certain preferential tax treatment. The Guidance Catalogue, issued by the NDRC on November 29, 2005, set out 88 types of renewable energy projects that may be entitled to preferential tax treatment if they comply with other requirements of tax incentive laws and regulations.

### *Enterprise Income Tax*

In accordance with the Circular 46 issued by MOF and the State Administration of Taxation, an enterprise set up after January 1, 2008 and engaged in public infrastructure projects is entitled to a tax holiday of a three-year full exemption from Enterprise Income Tax commencing from the first taxable year in which the project generates operating income, and is exempted from 50 % of the Enterprise Income Tax for three years thereafter.

### *VAT Law*

According to the Notice on Value Added Tax Policy Regarding Comprehensive Utilization of Part of the Resources and Other Products (關於部分資源綜合利用及其他產品增值稅政策問題的通知) jointly issued by MOF and the State Administration of Taxation on December 1, 2001 and the Notice on Value Added Tax Policy Regarding Comprehensive Utilization of Resources and Other Products (關於資源綜合利用及其他產品增值稅政策的通知) jointly issued by MOF and the State Administration of Taxation on December 9, 2008, the policy on an immediate 50 % VAT refund for the sales of electricity generated from wind power is implemented.

According to the Notice on the Abolishment of the Tax Refund Policy for the Purchase of Domestically Manufactured Equipment by Foreign Invested Enterprises (關於停止外商投資企業購買國產設備退稅政策的通知) jointly issued by the Ministry of Commerce and the State Administration of Taxation on December 25, 2008, the 100 % VAT refund policy applicable to foreign invested enterprises that purchase domestically manufactured equipment was terminated on January 1, 2009. However, foreign invested enterprises that purchased domestically manufactured equipment with a VAT invoice dated prior to June 30, 2009 may remain eligible for VAT refunds if they have applied to tax authorities for such refunds before June 30, 2009.

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## REGULATORY ENVIRONMENT

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In addition, effective from January 1, 2009, input VAT on certain equipment purchases is deductible from the output VAT. Pursuant to Notice on Several Questions on the Nation-wide VAT Reform (Cai Shui [2008] No.170) (關於全國實施增值稅轉型改革若干問題的通知(財稅[2008]170號)), deductible input VAT on equipment purchases refers to the VAT actually incurred on or after January 1, 2009 which is endorsed in the VAT deduction certificate issued on or after January 1, 2009 or calculated according to such VAT deduction certificate.