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Sons Ltd., AA Energy Ltd., SRG Apparels Pvt. Ltd., Karur K.C.P Packagings Ltd., Manidhari Gums & Chemicals, The KCP Limited, ETA Power Gen Pvt. Ltd., UP Sugar Mills Cogen Association, Armstrong Power Systems Pvt Ltd, Jindal ITF Urban Infra Ltd., Naga Limited, Finolex Cables Ltd, Sanjiv Prakashan, Kasturi Estates Pvt. Ltd., Orient Green Power Company Limited and IBPA have requested that to extend the validity of RECs as without such an extension several RECs are will expire resulting in losses for the REC projects.

- **Ranga Raju Warehousing Pvt. Ltd. / Greenko Group** has submitted that in absence of any validity period of the determined REC prices, the RE project developers shall not be certain about the sustenance of revenue stream from sale of RECs. Accordingly, RE developers would not be able to secure Financial Closure of their respective RE projects. This would lead to RE developers refraining from development of RE projects under the REC mechanism.

They have requested to provide certainty about the validity of the determined REC prices for at-least 10 years for enabling project financing and thus development of the same.

- **Autobat Batteries Pvt. Ltd.** has suggested to extend validity dates of old unsold RECs remaining with Old Plants (Before 31/03/2017) by at-least another five years due to failure of Discoms (Obligated Entities) to buy valid RECs and failure to penalise Discoms appropriately to fulfil their committed obligation of buying RECs in time.
- **Apex Coco and Solar Energy Ltd** has requested to increase the validity of existing RECs till 31.03.2022

- **Himachal Small Hydro Power Association** has requested to increase the validity of existing RECs till the time these are exhausted.
- **Ujaas Energy Ltd.** has requested to extend the validity of Solar RECs by 12 years.
- **GAIL** has commented that the proposal is silent on validity of RECs. The mitigation measures to be captured for avoiding the REC expiry
- **Indian Sugar Mills Association** has suggested extending the validity of RECs lying in inventory with the generators for another 12 months and ensuring strict enforcement of RPOs to avert endless extension of these RECs.
- **Sai Saburi Urja Pvt. Ltd.** has requested to extend the validity of existing REC by 20 % time i.e 153 as 80 % REC remain unsold. They have requested to have this provision for at least 2017-18, 2018-19 and 2019-20.
- **Renewable Energy Developers Association of Maharashtra (REDAM) and Green Energy Association** have submitted that have proposed to extend the validity of the RECs by at-least two years.

#### **Analysis & Decision**

36. Many stakeholders have requested to extend the validity of RECs that are expiring on 31.03.2017. Suggestions for duration of extension range between 2 years to 12 years.
37. Whereas the Commission had extended the validity of RECs expiring in FY 2014-15 by a period of three years vide Third Amendment to REC Regulations, the REC market has not seen the expected clearing ratio.



39. The Commission appreciates the concerns of the REC Project Developers. The Commission in exercise of Power to Relax provisions under Regulation 15 of REC Regulations extends the validity of RECs which are expiring in the next six months up to 31<sup>st</sup> March 2018. That is, the RECs expiring between 31<sup>st</sup> March 2017 and 30<sup>th</sup> September 2017 shall now remain valid up to 31<sup>st</sup> March 2018.

Month-wise Status		
SN	REC Expiring in	No of RECS
1	Mar-17	1,61,855
<b>FY 2016-17</b>		
1	Apr-17	28,295
2	May-17	18,072
3	Jun-17	35,880
4	Jul-17	1,81,033
5	Aug-17	1,79,801
6	Sep-17	1,11,135
7	Oct-17	3,73,127
8	Nov-17	2,47,000
9	Dec-17	3,68,009
10	Jan-18	1,86,019
11	Feb-18	2,93,955
12	Mar-18	3,12,785
<b>FY 2017-18</b>		
		<b>23,35,111</b>

38. The numbers of RECs that are expiring during FY 2017-18 are as below:

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40. The Commission also directs its staff to examine this issue of extension of the validity of RECs and initiate necessary process to amend the relevant provisions of the REC Regulations, if considered necessary.

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#### VI. Minimum Project Viability Requirement (MPVR)

##### Commission's Proposal

- The project viability approach covers the cost required to meet the viability parameters including O&M, Interest on Loan, Interest on Working Capital and Depreciation (and fuel expenses in case of Biomass and Cogeneration projects). Based on the review of generic tariff orders, the Commission has observed that the viability parameters as outlined above constitute 70% of the total levellised tariff.

##### Stakeholder Comments

- **Ginni Global Pvt. Ltd.** has submitted that the above-said paragraph defines Minimum Project Viability Requirement (MPVR) as the cost required to meet viability parameters including O&M, interest on loan, interest on working capital limit (WCL) and depreciation (fuel expenses in the case of Biomass and Co-generation Projects).

In other words, difference between levellised tariff and MPVR is the return on equity capital and tax expenses. Since, loan is repaid out of post-tax profit, and during repayment period, depreciation remains inadequate to meet repayment obligation, hence, necessity to allow advance depreciation in levellised tariff calculation, therefore, tax expense should also be considered as part of MPVR.



They have suggested that MPVR @ 85% of levelled tariff may be considered to determine Floor price.

- **L & T** has commented that in Appendix -1 clause 3-3.3, CERC has not mentioned the methodology and fact to decide upon the minimum project viability parameter of 70% of the total levelled tariff. For Solar, the developer while accounting the cost while bidding and reverse auction takes calculated risk for module prices at the time of delivery (generally 10 to 12 months after reverse auction), inverter technology and price and similarly for O&M for 25 yrs of plant life. Contingencies on the investments have also be factored for these specific risks.

It is requested to cross verify and declare the calculation for 70% as a result, i.e. Rs 3.26 per kWh. This should be different for each State and for the REC Solar plant owners.

They have also commented that in Appendix -1 clause 4.2.3, APPC price trend of previous years shows that every year there is an average increase of 8 paise to 22 paise per kWh in the APPC of the major States. Hence, the calculation of floor price by merely considering the one year data is not justified. It is requested to consider the past years data to arrive on the floor price, as this REC prices set are understood to be for a control period of 5 years.

- **IL&FS** has requested to consider using the APPCs and Feed-in-Tariffs for the latest year i.e. for FY 2016-17. It would be more precise and would reflect the correct resultant prices of the RECs.

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- **Continuum Wind Energy India** has suggested increasing the threshold from 70% to 80% so that generator is able to recover its actual cost, considering that revenue realized from trading of REC is highly uncertain.
  - **Ranga Raju Warehousing Pvt. Ltd. / Greenko Group** has suggested to consider 73% of the total levelized tariff as project viability cost for computation of Forbearance and Floor price as the review of generic tariff orders by different States suggest that the specified project viability cost parameters constitute about 72-74% of the total levelized tariff rather than 70% as specified in the CERC order in petition No.02/SM/2017 dated 28th Feb 2016.

They have submitted that REC Floor price has been computed considering minimum project viability requirement to meet RE targets. The minimum project viability requirement considers nil return to the project developer. However, no generator/developer shall ever intend to develop a power project providing nil return from the sale of power.

They have also submitted that the project developer shall have to bear higher expenses in the initial years on account of higher interest charges on term loan. Hence, the levelized tariff based on minimum project viability tariff shall not be able to recover even the minimum project cash-outflow expenses in the initial years leave aside the return on equity infused by the project developer. Since, levelized tariff considering minimum project viability tariff would commercially ruin the project developers.



They have requested that the determination of REC price based on the same should not be considered or if it has to be considered it should be at-least not less than the first year tariff based on minimum project viability tariff profile.

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- **Adani Green Energy Limited** has suggested that Minimum Project viability (MPV) is assumed as 70% of Average Levelised tariff is not justifiable. MPV include O&M cost, Interest on loan, interest on working capital & depreciation. Does not consider land cost and return on equity. Land cost, salvage value and Pre-tax ROE will not be more than 20% of the tariff. Hence MPV shall be 80% of the tariff instead of 70% assumed.

They have requested to consider MPV as 80% of the tariff instead of 70% assumed.

#### **Analysis & Decision**

41. Stakeholders such as Greenko, Continuum Wind Energy, etc. have objected to the minimum project viability being taken as 70% of tariff. While Ginni global has suggested that tax should be accounted for in the MPVR, Adani has commented that RoE along with land cost and salvage value shall amount to 20% only.
42. The project viability approach covers the cost required to meet viability parameters including O&M, Interest, Principal Repayment (and fuel expenses in case of Biomass and Co-generation) etc. The principle has been followed for determining the forbearance and floor price of REC up to 2014.
43. It has been observed that the project viability tariff amount computed based on the above-said parameters is in the range of 65-73%. For the purpose of regulatory

certainty, a threshold value of 70% has been considered for the computation of Project Viability Tariff. 231

## VII. Enforcement of Renewable Purchase Obligation (RPO)

### Stakeholder Comments

- **Modi Group (Jai Mangal Infra Powers Pvt. Ltd.), Tirupati Microtech P.Ltd. and Bharat Power Inc** have suggested strict enforcement of RPO for ensuring REC sales, penalty clauses for defaulting, strict instructions and guidelines for implementation to be issued to every SERC, Discom's and Obligated agencies. They have also suggested that in mean time, a warehousing scheme can be introduced where the Govt. buy's/mortgage these REC's and make payments to the investors so that projects will not get NPA.
- **IEX** has submitted that the said issue should be addressed, may be through the FOR, so that rolling over of RPO's should be done by taking said fact into consideration and a multiplication factor on the defaulters in terms of unfulfilled RPO should be applied. It will encourage demand of REC in the market, thereby creating a balanced out REC market and also dissuade obligated entities to request for roll over of the obligation to subsequent years.
- **Bajaj Finserv Limited and DCM Shriram Industries Limited** have submitted that the solution to increase demand for RECs is by implementation of minimum green energy norms or REC purchase by Obligated entities and not reducing the price.



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- **IWPA** has commented that the DISCOMs in majority of States have been refusing to purchase RECs for their RPO compliance. This practise has been further encouraged by the lack of serious punitive measures by respective State Commissions for continuous default by these DISCOMs. They have also submitted the details of RPOs non-compliance by few States viz. Assam, Chhattisgarh, MP, Punjab, UP, Rajasthan.
  - **AA Energy Ltd.** has submitted that the obligated entities which have been in default should be asked to meet past RPO compliance on the basis of the value of RECs traded in the past. They have also submitted that Commission may advise Ministry of Power to buy out the unsold RECs and subsequently decide the forbearance and floor price. The mechanism should be implemented with whole new deliberations by enforcing RPO and getting the required recognition for Financial Institution to accept it.
  - **Indian Paper Manufacturer's Association** has submitted that Lack of enforcement of the Renewable Purchase Obligation (RPO) has resulted in huge amount of RECs remaining unsold in the national inventory today, with low market clearance.
  - **IWTMA** has suggested that the provisions for avoiding undue advantage to RPO obligated entities in few States (eg. Karnataka, Rajasthan) which provide extended time for annual RPO compliance beyond end of financial year are required in the REC Regulations
  - **Rays Power Experts Pvt. Ltd., Laxmi Publications (P) Ltd, Apex Coco & Solar Energy Ltd, Saidpur Jute Co. Ltd, Triveni Sangam Holdings & Trading Co. Pvt**

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Ltd, Dr. DH Patel, Patel Wood Syndicate, Govindram Shobhram & Co., Agrawal Minerals (Goa) Pvt Ltd, Gangadhar Narsinghdas Agrawal Saraswati Industries R.H. Prasad & Company Pvt. Ltd., Raj Overseas and Himalaya Power Producers Association, have commented that guidelines should be issued for meeting RPO by State utilities, Open Access consumers and Captive consumers in various States. Instruction should be issued for strict implementation of penalty clauses on non-meeting of RPO by obligated entities.

- REConnect Energy Solutions Pvt. Ltd., Bonafide Himachalies Hydro Power Developers Association, Bansal Wind Mill Pvt. Ltd., Sri Sivajothi Spinning Mills (P) Ltd., Fab Colors, Baroda Moulds & Dies, Electrical Controls & Systems, Kaizen Switchgear Products, Kasturi & Sons Ltd., AA Energy Ltd., SRG Apparels Pvt. Ltd., Karur K.C.P Packagings Ltd., Manidhari Gums & Chemicals, The KCP Limited, Rane TRW Steering Systems Pvt Ltd, ETA Power Gen Pvt. Ltd., UP Sugar Mills Cogen Association, Jindal ITF Urban Infra Ltd. Armstrong Power Systems Pvt. Ltd., Naga Limited, Sanjiv Prakashan, Kasturi Estates Pvt. Ltd., have submitted that the existing inventory is a result in lack of demand of RECs, which itself is caused by lack of RPO enforcement by the states. This represents a significant failure on the part of State Regulators, the burden of which will have to be borne by RE projects. They have referred to the Commission's order in petition no. 266/SM/2012, dated 19.12.2012.

Further, Honourable ApTel has also held the following in respect of RPO enforcement in petition no. OP1 of 2013 dated 20/4/2015.



"The State Commissions are bound by their own Regulations and they must act strictly in terms of their Regulations." **234**

Reference to Comptroller and Auditor General (CAG) report (no. 34 of 2015) has been also made, that states :-

"Of the 24 States, six States complied with the RPO targets set by the respective State Energy Regulatory Commissions."

They have submitted that RECs issued after April 2017 should be used only for compliance of RPO pertaining to FY 2017-18 and onwards. This is in addition to the appropriate penal measures that should be taken as required under the RPO regulations. Without this measure the price reduction will have the effect of rewarding the defaulter.

- **SB Solar Services Pvt. Ltd.** has submitted that fulfilment of RPO obligations through procurement of RECs should not be allowed in States where sufficient RE projects have been / are being developed. The objective of developing RE projects shall be defeated if RECs are permitted in lieu of procurement of RE power from projects in energy rich/ sufficient States.

They have also requested to mandate the Obligated entities to comply with RPO through RE projects, where there is abundant potential to develop RE projects including the States of AP, Gujarat, Rajasthan, J&K, Karnataka, Kerala, MP, Maharashtra, TN, Orissa, Telangana.

- **Mytrah Energy (India) Pvt. Ltd.** has submitted that in order to enforce the RPO and make REC Mechanism effective, the Discoms and Obligated entities of States should submit a quarterly report on Commission's website related to the fulfillment of

RPO and penalties imposed on those entities which are non-compliant. RPO should be enforced on quarterly basis to skewed trading in the last few months of the financial year. **235**

- **L&T, Hasya Enterprises Pvt. Ltd., Klassic Wheels Pvt. Ltd., Giriraj Enterprises, Uma Corporation, Gaurav Agro Pipes, Bothara Agro Equipments Pvt. Ltd., Paras PVC Pipes & Fittings Pvt. Ltd., Pooja Renewable Energy Pvt. Ltd., Advik Hitech Pvt. Ltd. and Kasturi Foundry Pvt. Ltd.** has submitted that RPO compliance should be made mandatory and penalty to be imposed on non-compliant entities. They have also requested that the Commission shall not allow any waiver or carry-forward of Solar RPO for any utilities till the Solar REC inventory is available.
- **Lohia Developers India Pvt. Ltd., Lohia Gramin Vikas Pvt. Ltd. and DesignCo** have submitted that with lack of enforcement of the RPO and continuous waiver and carry-forward of the RPO, the law of natural justice is reversed and defaulters are incentivized with the reduction of the price of RECs at first in 2014 and then again in the FY 2017.

On one side due to weak enforcement, orders of SERCs going against the provisions of the regulations and directions of APTEL, non-compliance of the orders and directions of the commissions and on top it misusing the provisions of the UDAY MOU most of the DISCOMs have shifted their RPO shortfall of 2012-2013 till FY 2015-2016.

They have suggested to RPO compliance mandatory and impose penalty for non-compliance, which will enhance the REC trade further. They have also suggested not



allowing waiver or carry forward of Solar RPO compliance to any utilities by SERC's  
till Solar REC inventory is available.

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### Analysis & Decision

44. It has been pleaded by many stakeholders that strict enforcement of RPOs should be brought about, through penalty clauses for defaulting, or may be through the Forum of Regulators (FOR), so that rolling over of RPO's should warrant a multiplication factor on the defaulters in terms of unfulfilled RPO.

45. While the Commission appreciates these concerns, it needs to be reiterated that RPO compliance is under the jurisdiction of State Commissions. The Commission has advised the SERCs on the issue of RPO compliance in the past. The Commission is committed to working with SERCs through FOR for resolution of this issue.

## **VIII. Miscellaneous**

### Stakeholder Comments

- **Technology Multiplier for Non-Solar RECs**

REConnect Energy Solutions Pvt. Ltd., AA Energy Ltd., Bansal Wind Mill Pvt. Ltd., Sri Sivajothi Spinning Mills (P) Ltd., Fab Colors, Baroda Moulds & Dies, Electrical Controls & Systems, Kaizen Switchgear Products, Kasturi & Sons Ltd., SRG Apparels Pvt. Ltd., Karur K.C.P Packagings Ltd., Manidhari Gums & Chemicals, Rane TRW Steering Systems Pvt Ltd, The KCP Limited, ETA Power Gen Pvt. Ltd., UP Sugar Mills Cogen Association, Jindal ITF Urban Infra Ltd.

**Armstrong Power Systems Pvt. Ltd., Naga Limited, Sanjiv Prakashan, Kasturi Estates Pvt. Ltd.** have submitted that there is a wide variation in the floor price needed to achieve viability of different technologies. While biomass and bagasse based projects require Rs 1.9 and Rs 1.23 respectively, wind and SHP projects require less than Rs 1. The approach of taking a weighted average based on capacity is flawed as it will still result in biomass and bagasse projects becoming unviable. The data provided in the draft order makes for a strong case for technology based multiplier as without that some projects will not be able to function.

They have suggested providing a technology based multiplier as there is a wide variation in viability tariff requirement of different technologies.

- **Value Offset of REC**

**The KCP Limited** has submitted that the Solar RECs are accumulated worth Rs 4.2 crores due to poor clearing ratios. However they have to purchase Non-Solar RECs in order to comply with the Non-Solar RPO norms.

They have requested to consider the Non-Solar RPO with Solar RPO on value offset basis. This shall help the obligated entities who have Solar RECs and can fulfil Solar and Non-Solar RPO from the inventory of unsold RECs.

- **Bundling of Solar REC**

**Ujaas Energy Ltd.** commented that Commission should allow re-bundling of Solar REC with brown power so that instead of selling REC, solar power developer and other agencies can also get option to sell Solar power. The similar facility is already available for non REC via NVVN.



- **Discussion on Solar REC - RPO / Floor Price of REC**

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**SB Solar Services Pvt. Ltd.** has submitted that with capex for Solar projects declining rapidly, Solar tariffs are expected to become equal to or lower than APPC in various States, hence an option to eliminate Solar RECs together could be explored else implementation of new Solar capacity may be hampered

- **Vedanta Limited** has requested to introduce Over-the-Counter (OTC) trade by enabling bi-lateral trades in REC. In OTC trade, CERC may allow licensed electricity traders to participate in REC trade, in line with the electricity market. This move may give a major boost to REC market volume.

Introduction of OTC trades of RECs will enable the traders and generators to promote the installation of RE generation as they are engaged in one to one negotiations with the utilities and obligated entities.

Presently most of the utilities are inviting tenders for purchase of RE power in order to fulfil their renewable purchase obligation. Due to very limited participation in the tenders for supply RE power by RE generator, utilities are not able to achieve assigned targets.

If OTC trade of REC is allowed then, utilities shall be able to float tenders for purchase of RECs, directly from Generators or traders. As we have witnessed in electricity market, tendering process lead towards lower prices, therefore, utilities shall be able to purchase RECs at lower price and resultantly lower net impact on end use consumer of Discoms.

- **Prayas Energy Group** has submitted the following:

- a. The primary purpose of the REC was to overcome the geographical resource mismatch across the country to allow obligated entities in States with poor resource availability to comply with RPO obligations. It is important to note in this regard is that this holds true only for wind power and to some extent for SHP. Biomass and Solar resources are widely spread and available across the country.
- b. Secondly, it is not a primary intent of the REC to promote all renewable energy deployment in general but to ease RPO compliance through another mechanism. REC is expected to only contribute marginally to RPO compliance (present REC capacity of 4,017 MW is only 8% of the total installed RE capacity of 50,744 MW in the country). This ratio is likely to further fall in the coming years.
- c. Thirdly, with new large scale wind and Solar projects being connected to the ISTS, it is feasible to actually transmit power across States, unlike the situation few years ago. Competitive bidding has also ensured very low generation prices in such bids.
- d. Finally, the IEX has already petitioned the CERC for the introduction of a green instrument (G-DAM) on the power exchange which will allow for transactions of physical renewable power.

The whole basis for the REC mechanism needs to be seen in this light and re-examined afresh. Unless the REC prices are truly reflective of the market prices, obligated entities are more likely to seek compliance through other means such as Open Access, Captive, Group Captive, Power Exchanges and rooftop Solar net



metering. Future investments in REC mechanism will also dry up if there is a stark difference in REC and market pricing. **240**

With regard to the Solar forbearance and floor prices, the similar issues with using APPC data for 2015-16 instead of for 2017-18 and beyond exists and floor and forbearance prices would be much lower than proposed. Considering APPC for 2015-16 for MP (Rs 3.54/kWh) would mean that a Solar or wind project there would possibly need no floor price.

With Solar PV prices crashing, the earlier price difference between Solar and wind/biomass has vanished. The very basis for the continued differentiation between Solar and Non-Solar RPOs and RECs is debatable and will need to be addressed soon. Obligated entities should be able to procure the cheapest form of renewables, subject to technical grid constraints and after considering the system value (distance from transmission lines, contribution to peak demand etc.) of those renewable energy projects beyond mere generation price.

They have requested the Commission to come out with a comprehensive white paper and initiate a discussion on need for the continued distinction between Solar and Non-Solar RPOs/RECs

- **Mytrah Energy (India) Pvt. Ltd.** has submitted that NLDC had floated a draft for consideration of bi-monthly trade of REC on power exchanges. They request that such proposals should be implemented as it shall help in frequent realization of revenue. Alternatively, bilateral trade transactions of RECs can also be included.

They have also submitted that the major States with projects under REC mechanism are Gujarat, MP, TN, Maharashtra, UP etc. with more than 80% of the projects. However, in States like Gujarat and Maharashtra, SERCs are yet to notify the APPC. The Discoms are reluctant and submit that any number without any basis for back-up calculation will result in fixing the APPC for 25 years.

They have requested to safeguard the investments and implement the mechanism in an effective manner.

- **Apeiron Renewable Energy Pvt. Ltd.** has submitted that to bring REC market to life and to balance demand and supply of RECs in the market, RECs must be purchased by Clean Energy Mechanism or Renewable Energy Fund while States under UDAY scheme on timeline while meeting their renewable energy commitment since FY 2012. You would agree small MSME companies are being taken advantage by making it easy for States by not imposing penalty on them, which is travesty of justice. To compensate for one year loss the RECs in stock must be bought at Forbearance Price which is equivalent to Base price plus one year interest loss being presently suffered by MSME and providing basis of compensation for non-implementation of policy by CERC. (Tabulation is referred below)

Since REC policy has been a complete failure the commission instead of trying to ensure closure of companies to cover for failure should provide for alternate policy which facilitate reasonable return for companies going forward. One such mechanism can be to migrate companies from REC mechanism to prices discovered during tenders during the year the plants were put up.

Tabulation



Plants registered under REC mechanism – 351 (as per REC Registry website)

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Contracted power under REC mechanism: 718MW

Estimated generation per year (@15 lakhs unit / MW) – 718\*15 lakhs units = 10,770 lakh units

Unsold RECs on date: more than 47 lakhs (IEX and PXIL website – RECs offered for sale)

Base price of RECs – Rs 3500 / REC

Value of Solar RECs lying unsold ~1650 crores

Interest cost suffered per year due to unsold RECs (@11.5% / annum) ~190 crores / annum

Average loss on account of Interest only – Rs190\*100 lakh/ 10,770 lakh units generated = Rs 1.7 / unit of power produced.

COST of Non- Implementation of its Policy by CERC on RPO – Rs 1.7 / unit of power – Rs 1700 /REC – suffered by REC policy Solar Generators yearly.

- **Sai Saburi Urja Pvt. Ltd.** has requested to purchase REC stocks of atleast 1 MW PV Solar non captive / Third party sale plants that have not availed appreciated depreciation enabling them to repay financial institution. They have requested to have this provision for at least 2017-18, 2018-19 and 2019-20.
- **Power and Energy Consultants** has commented that the wind energy should be separated from Non-Solar REC as a separate identity.
- **L&T** has requested to incorporate some factor of comfort (in terms of extra subsidy, REC price multiplier etc.) for the companies to invest in REC based plant in the

states where Solar/Non-Solar plants are still not feasible in order to encourage the Indian REC market.

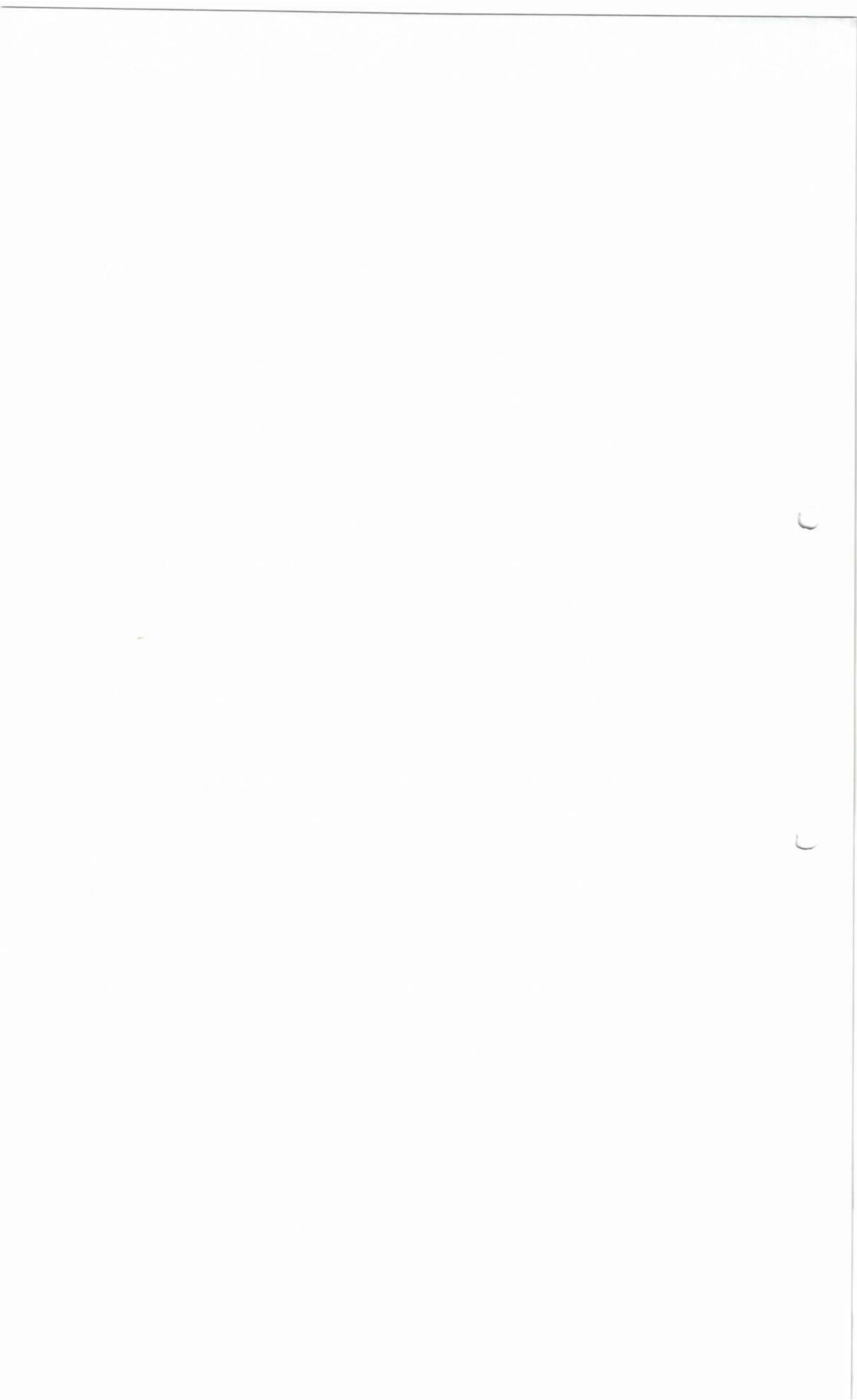
- **Green Energy Association** has submitted that the Solar RECs are receiving discriminatory treatment whereby, special treatment has been provided to the Non-Solar RECs. The bundled power supplied for every 40000 KWh of Solar Power, 1 Non-Solar REC is also bundled. However, no such provision has been provided for Solar RECs.

To give an example under this scheme in one of the trading NVVN has procured 85000 Non-Solar RECs and has been continuously buying the same.

It is therefore submitted that for every 40000 KWh of Solar power, 1 number of Solar RECs shall also be procured by NVVN / SECI / State and shall be bundled with conventional power.

- **Prodigy Hydro Power Pvt. Ltd.** has submitted that they should be allowed to enter into PPA with preferential tariff or allow third party/ inter-state sale instead of APPC. Further, upon completion of 5 year tariff period when projects should be allowed to sell energy to the Utility at preferential tariff, realistic consideration of capital cost of SHP projects should be done.
- **Shri S.P. Garg** has suggested several references for improving the implementation of the REC mechanism. These include international references of REC market like Forwards and Future Contracts in Australia, RE100 initiative for green energy procurement in Europe. It has also been submitted that REC purchase at discounted price (lower than floor price) shall be allowed. Increase in number of REC trading





sessions and also allowing Govt. owned companies with huge cash-piles to purchase RECs.

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### Analysis & Decision

46. The Commission is of the view that by introducing Technology Specific Multiplier for Non-Solar RECs, it will inundate the market with various types of RECs. As such, introducing Technology Multiplier will not be a suitable approach. Prayas has suggested a deep dive into the design of REC market- whether floor price is still needed and whether the distinction between solar and non-solar RPO is still needed, etc. The Commission directs the staff to work on a White Paper examining these aspects.
47. Couple of stakeholders have suggested that the Government should make arrangements for purchase of RECs by government controlled funds. The Commission appreciates the suggestion and would advise the Government to consider suitable intervention in this direction.
48. A couple of stakeholders have requested to allow sale of RECs below the floor price, by enabling over-the-counter trade or otherwise. While the Commission appreciates the intent of this suggestion given the stock of RECs, the floor price is determined based on minimum viability requirement for an REC project, through which the Commission tries to balance the risks assumed by project developers vis-à-vis price of RECs. For now, it is felt that the floor price acts as a necessary safeguard. However, the Commission has already directed the staff to examine the need for



floor price going forward after duly factoring in the current and emerging market conditions.

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49. The issue of Bundling of Solar RECs is beyond the scope of this Order.

50. The issue of project developers entering into PPA with preferential tariff or allow third party/ inter-state sale instead of APPC is beyond the scope of this Order.

51. **Summary of Decisions**

- 1) Validity of all solar and non-solar RECs that are expiring between 31.03.2017 and 30.09.2017 shall stand extended up to 31.03.2018.
- 2) Floor and forbearance price for non-solar RECs starting 01.04.2017 shall be as follows:

Non Solar REC	(Rs/ MWh)
Forbearance Price	3,000
Floor Price	1,000

- 3) Floor and forbearance price for solar RECs starting 01.04.2017 shall be as follows:

Solar REC	(Rs/ MWh)
Forbearance Price	2,400
Floor Price	1,000

4) The forbearance and floor prices of RECs as above shall remain valid until further orders of the Commission. **246**

5) This order shall be effective from 1.4.2017.

**Sd/-**

**(Dr. M. K. Iyer)  
Member**

**Sd/-**

**(A.S. Bakshi)  
Member**

**Sd/-**

**(A.K. Singhal)  
Member**

**Sd/-**

**(Gireesh B. Pradhan)  
Chairperson**

**New Delhi**

**30<sup>th</sup> March, 2017**



**Annexure A: List of stakeholders who have submitted their comments** **247**

S.No.	Stakeholder
1	AA Energy Limited
2	Adani Green Energy Ltd.
3	Advik Hitech Pvt. Ltd,
4	Agrawal Minerals (Goa) Pvt Ltd
5	Alliance Land Developers Pvt. Ltd.
6	Apeiron Renewable Energy Pvt. Ltd.
7	Apex Coco and Solar Energy Limited
8	Armstrong Power Systems Pvt. Ltd.
9	Autobat Batteries Pvt. Ltd.
10	Bajaj Finserv Limited
11	Bansal Windmills Pvt Ltd
12	Baroda Moulds & Dies
13	Bharat Power Inc.
14	Bonafide Himachalies Hydro Power Developers Association
15	Bothara Agro Equipments Pvt. Ltd.
16	Captive Power Producers Association
17	Chiranji Lal Spinners Pvt. Ltd.
18	Continuum Wind Energy India
19	Daksha Infrastructure Pvt. Ltd.
20	DCM Shiriram Industries Ltd.
21	DesignCo
22	Dr. DH Patel
23	Electrical Control & Systems

24	ETA Power Gen Pvt. Ltd.
25	Fab Colors
26	Finolex Cables Limited
27	Fluidcon Engineers
28	GAIL
29	Gangadhar Narsinghdas Agrawal
30	Gaurav Agro Pipes
31	Ginni Global Pvt. Ltd.
32	Giriraj Enterprises
33	Govindram Shobhram & Co.
34	Green Energy Association
35	Hasya Enterprises Pvt Ltd
36	Himachal Small Hydro Power Association
37	Himalaya Power Producers Association
38	Hindalco Industries - Aditya Birla Group
39	IEX
40	ILFS Energy Development Co. Ltd.
41	Indian Biomass Power Association
42	Indian Paper Manufacturer's Association
43	Indian Sugar Mills Association (ISMA)
44	Indian Wind Power Association (NRC)
45	InWEA
46	IWTMA
47	Jindal ITF Urban Infra Ltd.
48	JK Paper Ltd.



49	JVS Export
50	Kaizen Switchgear Products
51	Kanchanjunga Power Company Private Limited
52	Karur KCP Packagings Ltd.
53	Kasturi & Sons Ltd.
54	Kasturi Estates Pvt. Ltd.
55	Kasturi Foundry Pvt. Ltd.
56	Klassic Wheels Pvt. Ltd.
57	L&T
58	Laxmi Publications (P) Ltd.
59	Lohia Developers India Pvt. Ltd.
60	Lohia Gramin Vikas Pvt. Ltd.
61	Maharashtra State Electricity Distribution Company Limited (MSEDCL)
62	Manidhari Gums & Chemicals
63	Modi Group
64	Mytrah Energy (India) Pvt. Ltd.
65	Naga Limited
66	New Patel Saw Mill
67	Omega Renk Bearings Pvt. Ltd.
68	Orient Green Power Company Limited
69	Oswal Woolen Mills Ltd. Nahar
70	Paras PVC Pipes & Fittings Pvt. Ltd.
71	Patel Wood Syndicate
72	Pooja Renewable Energy Pvt. Ltd.
73	POSOCO

74	Power & Energy Consultants
75	Prayas Energy Group
76	Prodigy Hydro Power Pvt. Ltd.
77	R.H. Prasad & Company Pvt. Ltd.
78	Raj Overseas
79	Rajasthan Patrika Pvt. Ltd.
80	Rane TRW Steering Systems Pvt Ltd
81	Ranga Raju Warehousing Pvt. Ltd. / Greenko Group
82	Rays Power Experts
83	RE Connect Energy Solutions Pvt. Ltd.
84	Renewable Energy Developers Association of Maharashtra (REDAM)
85	Sai Saburi Urja Pvt. Ltd.
86	Saidpur Jute Co. Ltd
87	Sanjiv Prakashan
88	Saraswati Industries
89	SB Solar Services Pvt. Ltd.
90	Shiny Knitwear
91	Shri Dhanalakshmi Spintex Pvt. Ltd.
92	Shri Giriraj Energy Pvt. Ltd.
93	Sir Kasturchand Daga Solaire Inc
94	SJVN Limited
95	SP Garg (Individual)
96	SRG Apparel Pvt. Ltd.
97	Sri Sivajothi Spining Mills (P) Ltd.
98	Suma Shilp Limited



99	Tata Power Company
100	Tata Power Trading Company Ltd.
101	The KCP Limited
102	Tirupati Microtech Pvt. Ltd.
103	Triveni Sangam Holdings & Trading Co. Pvt Ltd
104	Ujaas
105	Uma Corporation
106	UP Sugar Mills Cogen Association
107	Vedanta Limited
108	WIPPA / Renew Power

**251**

**ANNEXURE-1A (NON SOLAR REC FORBEARANCE AND FLOOR PRICE – CASE OF AVERAGE WIND TARIFF)**

**252**

Small Hydro Power (SHP)	APPC (2016-17) as estimated based on SERC Tariff Orders for 2016-17 (Rs/kWh)	SERC Tariff for Small Hydro Project (Average of <5 MW and 5-25 MW) based on SERC Orders (Rs/kWh)	Difference b/w Tariff and APPC (Rs/kWh)	Project Viability Tariff Small Hydro Project based on SERC Orders (Rs/kWh)	Difference b/w Project Viability Tariff and APPC (Rs/kWh)
State					
Gujarat*	3.39	3.98	0.59	2.79	-0.60
Himachal Pradesh	2.29	3.22	0.93	2.25	-0.04
Jammu & Kashmir	2.96	4.07	1.11	2.85	-0.11
Karnataka	3.23	4.16	0.93	2.91	-0.32
Madhya Pradesh	2.82	6.32	3.50	4.42	1.60
Maharashtra*	3.56	4.42	0.86	3.09	-0.47
Manipur	2.86	4.13	1.27	2.89	0.03
Mizoram	2.94	4.13	1.19	2.89	-0.05
Punjab	3.56	5.12	1.56	3.58	0.02
Uttar Pradesh	3.78	5.69	1.91	3.98	0.20
Uttarakhand	2.63	4.13	1.50	2.89	0.26
West Bengal	3.62	4.42	0.80	3.09	-0.53
<b>Technology Specific Forbearance Price (Small Hydro Power)</b>				<b>3.50</b>	
<b>Technology Specific Floor Price (Small Hydro Power)</b>				<b>1.60</b>	



Wind Energy	APPC (2016-17) as estimated based on SERC Tariff Orders for 2016-17 (Rs/kWh)	SERC Tariff for Wind Energy Project (Avg. Tariff of Zone) (Rs/kWh)	Difference b/w Tariff and APPC (Rs/kWh)	Project Viability Tariff (70% of SERC Tariff) (Rs/kWh)	Difference b/w Project Viability Tariff and APPC (Rs/kWh)
State					
Andhra Pradesh	3.61	4.84	1.23	3.39	-0.22
Gujarat*	3.39	4.72	1.33	3.30	-0.09
Jammu & Kashmir	2.96	4.94	1.98	3.46	0.50
Karnataka	3.23	4.5	1.27	3.15	-0.08
Madhya Pradesh	2.82	4.78	1.96	3.35	0.53
Maharashtra*	3.56	4.59	1.03	3.21	-0.35
Rajasthan <sup>5</sup>	3.39	5.90	2.51	4.13	0.74
Tamil Nadu #	3.55	4.16	0.61	2.91	-0.64
Haryana	3.59	4.77	1.18	3.34	-0.25
<b>Technology Specific Forbearance Price (Wind Energy)</b>				<b>2.51</b>	
<b>Technology Specific Floor Price (Wind Energy)</b>				<b>0.74</b>	

Biomass	APPC (2016-17) as estimated based on SERC Tariff Orders for 2016-17 (Rs/kWh)	Average SERC Tariff for Biomass Project based on SERC Orders (Rs/kWh)	Difference b/w Tariff and APPC (Rs/kWh)	Project Viability Tariff (70% of SERC Tariff) (Rs/kWh)	Difference b/w Project Viability Tariff and APPC (Rs/kWh)
State					
Bihar	3.66	7.4	3.74	5.18	1.52
Gujarat*	3.39	5.64	2.25	3.94	0.55
Karnataka	3.23	5.53	2.30	3.87	0.64
Maharashtra*	3.56	7.66	4.10	5.36	1.80
<b>Punjab</b>	3.56	8.20	<b>4.64</b>	5.74	<b>2.18</b>
Rajasthan <sup>§</sup>	3.39	6.79	3.40	4.75	1.36
Tamil Nadu #	3.55	6.07	2.52	4.25	0.70
Uttar Pradesh	3.78	6.88	3.10	4.82	1.04
Madhya Pradesh	2.82	5.64	2.82	3.95	1.13
<b>Technology Specific Forbearance Price (Biomass)</b>				<b>4.64</b>	
<b>Technology Specific Floor Price (Biomass)</b>				<b>2.18</b>	



Bagasse/ Cogeneration	APPC (2016-17) as estimated based on SERC Tariff Orders for 2015-16 (Rs/kWh)	SERC Tariff for Bagasse/Cogeneration Project based on SERC Orders (Rs/kWh)	Difference b/w Tariff and APPC (Rs/kWh)	Project Viability Tariff (70% of SERC Tariff) (Rs/kWh)	Difference b/w Project Viability Tariff and APPC (Rs/kWh)
State					
Bihar	3.66	6.19	2.53	4.33	0.67
Gujarat*	3.39	5.17	1.78	3.62	0.23
Haryana	3.59	4.20	0.61	2.94	-0.65
Jammu & Kashmir	2.96	5.7	2.74	3.99	1.03
Karnataka	3.23	5.16	1.93	3.61	0.38
Maharashtra*	3.56	6.7	3.14	4.69	1.13
Punjab	3.56	6.59	3.03	4.61	1.05
Tamil Nadu #	3.55	5.58	2.03	3.91	0.36
Uttar Pradesh	3.78	6.14	2.36	4.30	0.52
Madhya Pradesh	2.82	6.28	3.46	4.40	1.58
<b>Technology Specific Forbearance Price (Bagasse / Cogeneration)</b>				<b>3.46</b>	
<b>Technology Specific Floor Price (Bagasse / Cogeneration)</b>				<b>1.58</b>	

**APPC Data**

\* GERC, MERC – APPC derived using escalation @3% over 2015-16 values

# KSERC, TERC, TNERC Tariff Order issued in 2014-15, escalated @6%

\$ AERC, DERC, JSERC, RERC Tariff Order issued in 2015-16, escalated @3%

**ANNEXURE-1B (NON SOLAR REC FORBEARANCE AND FLOOR PRICE – CASE OF BID TARIFF FOR  
WIND)**

State	APPC (2016-17) as estimated based on SERC Tariff Orders for 2016-17 (Rs/kWh)	Bid Discovered Tariff for Wind Energy Project (Rs/kWh)	Difference b/w Tariff and APPC (Rs/kWh)	Project Viability Tariff based on Bid Discovered Tariff (Rs/kWh)	Difference b/w Project Viability Tariff and APPC (Rs/kWh)
Andhra Pradesh	3.61	3.46	-0.15	2.42	-1.19
Gujarat*	3.39	3.46	0.07	2.42	-0.97
Jammu & Kashmir	2.96	3.46	0.50	2.42	-0.54
Karnataka	3.23	3.46	0.23	2.42	-0.81
Madhya Pradesh	2.82	3.46	0.64	2.42	-0.40
Maharashtra*	3.56	3.46	-0.10	2.42	-1.14
Rajasthan <sup>§</sup>	3.39	3.46	0.07	2.42	-0.97
Tamil Nadu #	3.55	3.46	-0.09	2.42	-1.13
Haryana	3.59	3.46	-0.13	2.42	-1.17
<b>Technology Specific Forbearance Price (Wind Energy)</b>				<b>0.64</b>	
<b>Technology Specific Floor Price (Wind Energy)</b>				<b>-0.40</b>	

**APPC Data**

\* GERC, MERC – APPC derived using escalation @3% over 2015-16 values

# KSERC, TERC, TNERC Tariff Order issued in 2014-15, escalated @6%

§ AERC, DERC, JSERC, RERC Tariff Order issued in 2015-16, escalated @3%



COURT - I

Annexure H  
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IN THE APPELLATE TRIBUNAL FOR ELECTRICITY  
(Appellate Jurisdiction)

IA NO.275 OF 2017 IN  
APPEAL NO.95 OF 2017

&

IA NO.305 OF 2017 IN  
APPEAL NO. 105 OF 2017

Dated: 25<sup>th</sup> April, 2017

Present: Hon'ble Mrs. Justice Ranjana P. Desai, Chairperson  
Hon'ble Mr. I.J. Kapoor, Technical Member

In the matter of :

Green Energy Association ...Appellant(s)  
Vs.  
Central Electricity Regulatory Commission ...Respondent(s)

Counsel for the Appellant(s) : Mr. Sanjay Sen, Sr. Adv.  
Ms. Mandakini Ghosh  
Mr. Saransh Shaw  
Ms. Ritika Singhal

Counsel for the Respondent(s) : Mr. Nikhil Nayyar for CERC

IA NO.305 OF 2017 IN  
APPEAL NO. 105 OF 2017

In the matter of :

Indian Wind Power Association (NRC) ...Appellant(s)  
Vs.  
Central Electricity Regulatory Commission & Anr. ...Respondent(s)

Counsel for the Appellant(s) : Mr. Vishal Gupta

Counsel for the Respondent(s) : Mr. Nikhil Nayyar for CERC

ORDERAPPEAL NO. 105 OF 2017

Admit. Issue notice. Mr. Nikhil Nayyar takes notice on behalf of Respondent No.1. Notice be issued to the other Respondents returnable on 25.05.2017. Dasti, in addition, is permitted.

(IA Nos. 275 & 305 of 2017)  
*(Applications for Stay)*

I.A. No. 275 of 2017 is filed in Appeal No. 95 of 2017 and I.A. No. 305 of 2017 is filed in Appeal No. 105 of 2017. In both these IAs, the prayer is for stay of the order dated 30/03/2017 passed by the Central Electricity Regulatory Commission ("**Central Commission**"). Hence, both these IAs can be disposed of by a common order. It is also prayed that in the alternate the trading of RECs at the price determined in the impugned order be stayed till the disposal of the present appeals.

We have heard learned counsel for the parties. Learned counsel have urged that the impugned order has impacted the RE generators under the REC mechanism as it has arbitrarily revised the REC's prices without providing any protection to the existing unsold REC inventory. The impugned order is thus in contravention of Regulations 7 and 9 of the CERC REC Regulations and the provisions of the Electricity Act, 2003. It is further urged that the Central Commission has failed to provide any cogent reasoning for its departure from the methodology used for determination of floor and forbearance price by taking the REC CERC Benchmark Tariff. It is submitted that if the impugned order is not stayed or if the trading of RECs is not suspended, irreparable loss will be caused to the RE generators.



Mr. Nikhil Nayyar, learned counsel for the Central Commission has strenuously opposed the grant of interim relief. Counsel submitted that the Central Commission has acted within the parameters of statutory regulations and no vested rights have accrued in favour of the Appellants *de-hors* the statutory regulations. Hence, the prayers made in the stay applications deserve to be rejected. Counsel submitted that floor and forbearance price reflect the market conditions and realities and, in the best interest of market development, the decision of floor and forbearance price has been taken in the impugned order and the same does not deserve to be stayed. It is submitted that the Appellant-Association does not represent all the RE generators and suspension of trading will affect right of freedom to trade of other RE generators without giving them the opportunity of being heard.

Having heard learned counsel for the parties, *prima facie*, we are of the opinion that the prayers for the stay of the impugned order or suspension of sale of all RECs till the disposal of the present appeal, cannot be granted. *Prima facie*, we appreciate the contention of Mr. Nayyar that the Appellants have no vested rights *de-hors* the statutory regulations. The Central Commission's order *prima facie* appears to be in line with the statutory regulations. Any order of stay or suspension of sale of all RECs would not be proper because it will not be in the general interest of the industry. Applications are disposed of. Needless to say that this order will abide by the final order that will be passed in these appeals.

**APPEAL NOS.95 & 105 OF 2017**

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List these appeals for hearing on 25.05.2017 at 2.30 p.m. In the meantime, pleadings be completed.

**(I. J. Kapoor)**  
**Technical Member**  
*ts/kt*

**(Justice Ranjana P. Desai)**  
**Chairperson**



ITEM NO.13+54

Annexure I  
COURT NO.6 SECTION XVII  
S U P R E M E C O U R T O F I N D I A 261  
RECORD OF PROCEEDINGS

Civil Appeal No(s). 6083/2017

INDIAN WIND POWER ASSOCIATION (NRC)

Appellant(s)

VERSUS

CENTRAL ELECTRICITY REGULATORY COMMISSION AND ANR Respondent(s)  
(With appln. (s) for stay)

With C.A. No.6334/2017

(With appln.(s) for exemption from filing c/c of the impugned  
Judgment and ex-parte stay and office report)

Date: 08/05/2017 These appeals were called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE PINAKI CHANDRA GHOSE

HON'BLE MR. JUSTICE ROHINTON FALI NARIMAN

For Appellant(s)

Mr. K.V. Vishwanathan, Sr. Adv.

Mr. Vishal Gupta, AOR

Mr. Abhishek Raj, Adv.

Mr. Aryama Sundaram, Sr. Adv.

Mr. Parinay Deep Shah, Adv.

Ms. Mandakini Ghosh, Adv.

Ms. Supriya Juneja, AOR

Mr. Saransh Shaw, Adv.

Ms. Ritika Singhal, Adv.

M. Jaggi, Adv.

For Respondent(s)

Mr. Nikhil Nayyar, AOR

Mr. N. Sai Vinod, Adv.

UPON hearing the counsel the Court made the following  
O R D E R

Heard the learned Senior counsel appearing for the appellants  
in both the Civil Appeals and the learned counsel appearing for the  
Commission.

Let notice be issued in the matters, returnable after eight  
weeks.

In the meantime, there shall be stay of the order of the  
Central Electricity Regulatory Commission.

(VISHAL ANAND)  
COURT MASTER

(SNEH LATA SHARMA)  
COURT MASTER



## Annexure J 262

Circular No.: IEX/MO/242/2017

Date: 26 May 2017

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### Suspension of REC trading session

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Dear Members,

The Honorable Central Electricity Regulatory Commission has advised the Exchange to suspend the trading sessions in RECs until the stay is vacated by the Honorable Supreme Court.

As such the REC trading session shall remain suspended till further notice from Hon'ble CERC. Members are requested to kindly take note of the same. Any further developments will be intimated separately to the members.

For and on behalf of

Indian Energy Exchange Limited

Prasanna Rao  
Vice President (Market Operations)

---

Kindly contact IEX operations- 011-43004054/53 or send email at [iex-operations@iexindia.com](mailto:iex-operations@iexindia.com) for any clarification.



IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 6083 OF 2017

WITH

I.A. NOS. 42490 AND 42496 OF 2017

INDIAN WIND POWER ASSOCIATION (NRC)

Appellant(s)

VERSUS

CENTRAL ELECTRICITY REGULATORY COMMISSION & ANR.

Respondent(s)

O R D E R

- 1) Application for intervention is allowed.
- 2) An I.A. being No. 42496/2017 has been filed by M/s Global Energy Private Limited for clarification of the order passed by this Court on 08.05.2017. It has been pointed out by Mr. Dhruv Mehta, learned Senior Counsel, appearing on behalf of the applicant, that in this Court, the appellant before us i.e. Indian Wind Power Association in C.A. No. 6083/2017 has itself sought for an alternative prayer in the following terms:

"(c) In the alternative, direct the Respondents to ensure that any obligated entity purchasing RECs at the floor price determined vide the order dated 30.03.2017 shall deposit the difference between the earlier floor price and the present Floor Price with the Respondent No.1, Central Commission during the pendency of the Appeal No. 105 of 2017 before the Appellate Tribunal;"

He, therefore, states that if we were to modify our earlier order and allow prayer (c), the interest of justice would be better served.

3) On the other hand, Mr. K.V. Vishwanathan, learned Senior Counsel appearing on behalf of the appellant in Civil Appeal No. 6083/2017 argues before us that this was only an alternative prayer, and, in any case, the matter itself is going to be heard by the Appellate Tribunal on 17.07.2017 and that, therefore, we ought to stay our hands until the Appellate Tribunal renders a final decision in the matter.

4) Having heard the learned counsel for the parties, we feel that there should be no problem if RECs were to be traded at the figures given previously.

5) That being the case, we now substitute our order dated 08.05.2017 by granting prayer (c) instead of staying the Appellate Tribunal's order.

6) With this modification/clarification, I.A. as well as the appeal stands disposed of.

..... J.  
(ROHINTON FALI NARIMAN)

..... J.  
(SANJAY KISHAN KAUL)

New Delhi;  
July 14, 2017.



ITEM NO.52

(Revised)  
COURT NO.13

SECTION XVII

S U P R E M E C O U R T O F I N D I A  
R E C O R D O F P R O C E E D I N G S

Civil Appeal No(s). 6083/2017

INDIAN WIND POWER ASSOCIATION (NRC)

Appellant(s)

VERSUS

CENTRAL ELECTRICITY REGULATORY COMMISSION &amp; ANR.

Respondent(s)

(FOR INTERVENTION/IMPLEADMENT ON IA 42490/2017 FOR  
CLARIFICATION/DIRECTION ON IA 42496/2017  
FOR STAY APPLICATION ON IA 1/2017)

WITH

C.A. No. 6334/2017 (XVII)

(FOR EX-PARTE STAY ON IA 1/2017

FOR EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT ON IA  
2/2017)

Date : 14-07-2017 These matters were called on for hearing today.

CORAM : HON'BLE MR. JUSTICE ROHINTON FALI NARIMAN  
HON'BLE MR. JUSTICE SANJAY KISHAN KAUL

Counsel for parties:

Mr. K.V. Vishwanathan, Sr. Adv.  
Mr. Vishal Gupta, AOR  
Mr. Abhishek Raj, Adv.Mr. Dhruv Mehta, Sr. Adv.  
Mr. Anil Kaushik, Adv.  
Mr. Tanmaya Mehta, Adv.  
Mr. Rajinder Singh, Adv.  
Mr. Abhishek Mishra, Adv.Mr. Sanjay Sen, Sr. Adv.  
Ms. Mandakini Ghosh, Adv.  
Mr. Parinay D. Shah, Adv.  
Mr. Saransh Shaw, Adv.  
Ms. Supriya Juneja, AORMr. Nikhil Nayyar, AOR  
Mr. N. Sai Vinod, Adv.  
Mr. Dhananjay Baijal, Adv.  
Ms. Smriti Shah, Adv.  
Mr. Divyanshu Rai, Adv.

UPON hearing the counsel the Court made the following **266**  
O R D E R

Civil Appeal No(s). 6083/2017:

Application for intervention is allowed.

Application for clarification as well as the appeal stands disposed  
of in terms of the signed order.

Pending applications, if any, also stands disposed of.

C.A. No. 6334/2017:

List this appeal in the usual course.

(R. NATARAJAN)  
COURT MASTER

(SAROJ KUMARI GAUR)  
COURT MASTER

(Signed order is placed on the file)



ITEM NO.52

COURT NO.13

SECTION XVII **267**

S U P R E M E C O U R T O F I N D I A  
R E C O R D O F P R O C E E D I N G S

Civil Appeal No(s). 6083/2017

INDIAN WIND POWER ASSOCIATION (NRC)

Appellant(s)

VERSUS

CENTRAL ELECTRICITY REGULATORY COMMISSION &amp; ANR.

Respondent(s)

(FOR INTERVENTION/IMPLEADMENT ON IA 42490/2017 FOR  
CLARIFICATION/DIRECTION ON IA 42496/2017  
FOR STAY APPLICATION ON IA 1/2017)

WITH

C.A. No. 6334/2017 (XVII)

(FOR EX-PARTE STAY ON IA 1/2017

FOR EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT ON IA  
2/2017)

Date : 14-07-2017 These matters were called on for hearing today.

CORAM : HON'BLE MR. JUSTICE ROHINTON FALI NARIMAN  
HON'BLE MR. JUSTICE SANJAY KISHAN KAUL

Counsel for parties: Mr. K.V. Vishwanathan, Sr. Adv.  
Mr. Vishal Gupta, AOR  
Mr. Abhishek Raj, Adv.

Mr. Dhruv Mehta, Sr. Adv.  
Mr. Anil Kaushik, Adv.  
Mr. Tanmaya Mehta, Adv.  
Mr. Rajinder Singh, Adv.  
Mr. Abhishek Mishra, Adv.

Ms. Supriya Juneja, AOR

Mr. Nikhil Nayyar, AOR  
Mr. N. Sai Vinod, Adv.  
Mr. Dhananjay Baijal, Adv.  
Ms. Smriti Shah, Adv.  
Mr. Divyanshu Rai, Adv.

UPON hearing the counsel the Court made the following  
O R D E R

Civil Appeal No(s). 6083/2017:

Application for intervention is allowed.

Application for clarification as well as the appeal stands disposed  
of in terms of the signed order. **268**

Pending applications, if any, also stands disposed of.

C.A. No. 6334/2017:

List this appeal in the usual course.

(R. NATARAJAN)  
COURT MASTER

(SAROJ KUMARI GAUR)  
COURT MASTER

(Signed order is placed on the file)





Circular No.: IEX/MO/248/2017

Date: 24 July 2017

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**Resumption of REC trading session for Non-Solar only**

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The Honorable Central Electricity Regulatory Commission (CERC) vide its letter dated 20th July 2017, has informed the Exchange to resume the monthly trading in Non-Solar REC at the floor price prevalent earlier i.e. at Rs. 1500/MWh and the difference between the said floor price and the floor price determined by the Commission vide order dated 30.3.2017 in Petition No. 2/SM/2017 i.e. at Rs. 500/MWh shall be deposited with the Commission during the pendency of Appeal No. 105 of 2017 before the Appellate Tribunal for Electricity.

Trading in REC Non-Solar shall recommence from the month of July 2017 and the trading session will be held on **26<sup>th</sup> of July 2017** accordingly and shall continue every month as per calendar issued by the Exchange from time to time. The forbearance and floor price that would be considered for this session and sessions thereafter, till further instructions from Hon'ble CERC, shall be as under:

Rs./MWh	Non Solar REC (Rs/ MWh)
Forbearance Price	3,300
Floor Price	1,500

Members may also note that in case the cleared price happens to be the floor price as indicated above, buyers of the REC Non-Solar certificates will have to make payment as per the floor price, whereas the sellers will be made payment of floor price as determined by the Hon'ble CERC vide its order dated 30.03.2017 i.e. Rs 1000/- (Rs. One Thousand only) per REC, and the difference (i.e. Rs 500/- (Rs Five Hundred only) per REC, shall be deposited with the Hon'ble CERC. The amount deposited shall be settled as per the further decision in the matter.



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The above referred process of trading and settlement will continue till further order of the Hon'ble CERC in the matter.

Members may kindly note that the trading in Solar REC shall remain suspended till further notice.

Members are requested to kindly take note of the same.

For and on behalf of  
Indian Energy Exchange Limited

Akhilesh Awasthy  
Director (Market Operations)

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Kindly contact IEX operations- 011-43004054/53 or send email at [iex-operations@iexindia.com](mailto:iex-operations@iexindia.com) for any clarification.



IN THE SUPREME COURT OF INDIA  
CIVIL APPELLATE JURISDICTION

I.A.NO. 82970 OF 2017

IN

CIVIL APPEAL No. 6334 OF 2017

GREEN ENERGY ASSOCIATION

... Appellant(s)

Versus

CENTRAL ELECTRICITY REGULATORY COMMISSION

... Respondent(s)

O R D E R

The limited prayer sought in the present I.A. No. 82970 of 2017 is that our Order dated 08.05.2017 be clarified only to a limited extent, namely that the respondent be allowed to extend RECs until 31.03.2018. Accordingly, we modify our order to this limited extent.

The civil appeal also stands disposed of. This order to continue until the Appellate Tribunal finally decides the appeal.

.....J.  
(ROHINTON FALI NARIMAN)

.....J.  
(SANJAY KISHAN KAUL)

New Delhi,  
Dated: 20<sup>th</sup> September, 2017.

ITEM NO.7

COURT NO.12

SECTION XVII **272**

S U P R E M E C O U R T O F I N D I A  
R E C O R D O F P R O C E E D I N G S

Civil Appeal No(s). 6334/2017

GREEN ENERGY ASSOCIATION

Appellant(s)

VERSUS

CENTRAL ELECTRICITY REGULATORY COMMISSION Respondent(s)  
(ONLY I.A.NO.82970 (FOR VACATING STAY) IN C.A.NO.6334/2017 BE  
LISTED ON 20.09.2017)

Date : 20-09-2017 This matter was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE ROHINTON FALI NARIMAN  
HON'BLE MR. JUSTICE SANJAY KISHAN KAUL

For Appellant(s) Ms. Supriya Juneja, AOR  
Mr. Saeed Qadri, Adv.  
Mr. Parinay Deep Shah, Adv.  
Ms. Mandikini Ghosh, Adv.  
Mr. S.Saransh Shaw, Adv.

For Respondent(s) Mr. Nikhil Nayyar, AOR  
Mr. N.Sai Vinod, Adv.  
Mr. Dhananjay Baijal, Adv.  
Ms. Smriti Shah, Adv.  
Mr. Divyanshu Rai, Adv.

UPON hearing the counsel the Court made the following  
O R D E R

I.A. No. 82970 of 2017 and appeal are disposed of in  
terms of the signed order.

Pending applications, if any, shall stand disposed of.

(SHASHI SAREEN)  
AR CUM PS

(Signed order is placed on the file)

(SAROJ KUMARI GAUR)  
BRANCH OFFICER



Annexure N

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APPELLATE TRIBUNAL FOR ELECTRICITY AT NEW DELHI  
(APPELLATE JURISDICTION)

APPEAL NO. 95 OF 2017, APPEAL NO. 105 of 2017

AND

APPEAL NO.173 OF 2017

Dated : 12<sup>th</sup> April, 2018

PRESENT :HON'BLE MR. JUSTIC N.K. PATIL, JUDICIAL MEMBER  
HON'BLE MR. S.D. DUBEY, TECHNICAL MEMBER

APPEAL NO. 95 OF 2017

IN THE MATTER OF:

1. Green Energy Association  
Sargam, 143, Taqdir Terrace,  
Near Shirodkar High School,  
Dr. E. Borjes Road,  
Parel (E),  
Mumbai-400 012

... Appellant

Versus

1. Central Electricity Regulatory Commission  
3rd and 4th Floor,  
Chanderlok Building  
36, Janpath,  
Delhi-110001

... Respondent

**Counsel for the Appellant(s)** : Mr. Sanjay Sen, Sr. Adv.  
Ms. Mandakini Ghosh  
Ms. Ritika Singhal  
Mr. Saransh Shaw  
Mr. Parinay Deep Shaw

**Counsel for the Respondent(s)** : Mr. Nikhil Nayyar  
Mr. Divyanshu Rai for R-1

APPEAL NO. 105 of 2017IN THE MATTER OF:

1. Indian Wind Power Association (NRC)  
World Trade Centre,  
513 & 514, Barakhamba Lane,  
New Delhi - 110001 ... **Appellant**

**Versus**

1. Central Electricity Regulatory Commission (CERC)  
3rd & 4th Floor, Chanderlok Building, 36,  
Janpath, New Delhi- 110001
2. Power System Operation Corporation Limited  
B-9 (1<sup>st</sup> Floor), Qutab Institutional Area,  
Katwaria Sarai, New Delhi -110016 ... **Respondent(s)**

**Counsel for the Appellant(s)** : Mr. Vishal Gupta  
Mr. Kumar Mihir  
Mr. Abhishek Rai

**Counsel for the Respondent(s)** : Mr. Nikhil Nayyar  
Mr. Divyanshu Rai for R-1

APPEAL NO. 173 OF 2017IN THE MATTER OF:

1. Uttar Pradesh Sugar Mills Co-Gen Association,  
403, Chintels House  
Station Road,  
Lucknow - 226 001  
Through its Secretary ... **Appellant**

**Versus**

1. Central Electricity Regulatory Commission (CERC)  
3rd & 4th Floor, Chanderlok Building, 36,  
Janpath, New Delhi- 110001  
Through its Secretary ... **Respondent**



**Counsel for the Appellant(s)** : Mr. Vishal Gupta  
Mr. Avinash Menon

**Counsel for the Respondent(s)** : Mr. Nikhil Nayyar  
Mr. Divyanshu Rai for R-1

**J U D G M E N T**

**PER HON'BLE MR. S. D. DUBEY, TECHNICAL MEMBER**

**Appeal No. 95 of 2017**

1. The present appeal under sub section (1) and (2) of Section 111 of the Electricity Act, 2003 has been preferred by Green Energy Association (hereinafter referred to as the '**the Appellant**') against the impugned order dated 30.03.2017 passed by the Central Electricity Regulatory Commission (hereinafter referred to as "**Central Commission/ CERC**") in Petition No. 02/SM/2017 determining the forbearance and floor price for the REC framework. The Petition was initiated by the CERC to determine the forbearance and floor price of the REC framework, to be made effective from 01.04.2017, in accordance with the Central Electricity Regulatory Commission (Terms and Conditions for Recognition and Issuance of Renewable Energy Certificate for Renewable Energy Generation) Regulations, 2010 "**CERC REC Regulations**".

**APPEAL NO. 105 of 2017**

2. The Appellant herein Indian Wind Power Association is filing the instant appeal under Section 111 of the Electricity Act, 2003 challenging the order dated 30.03.2017 passed by the Central Electricity Regulatory Commission (hereinafter referred as the "Central Commission") in a *suo motu* proceeding in Petition No. 02/SM/2017 (hereinafter referred as "the

Impugned Order”) whereby the Central Commission determined Forbearance and Floor Price for the REC framework to be applicable from 1st April 2017. The appellant has contested that vide its said Order, the Central Commission has drastically reduced the REC floor and forbearance price without considering the provisions of the Electricity Act, National Tariff Policy and its own Regulations on REC framework.

**APPEAL NO.173 OF 2017**

3. The Appellant herein Uttar Pradesh Sugar Mills Co-Gen Association is filing the instant appeal under Section 111 of the Electricity Act, 2003 against the judgment and Order dated 30.03.2017 passed by the Central Electricity Regulatory Commission (hereinafter referred as the “Central Commission”) in a *suo motu* proceeding in Petition No. 02/SM/2017 (hereinafter referred as “the Impugned Order”) wherein the Central Commission determined Forbearance and Floor Price for the REC framework to be applicable from 1st April 2017. The appellant is aggrieved that the Central Commission, has by way of the Impugned Order , without considering and adhering to the provisions of the Electricity Act, National Tariff Policy and its Regulations on REC framework wrongly proceeded to reduce the REC floor and forbearance price by a sizeable portion and that too, with retrospective effect.

4. **Brief Facts of the Case(s)**

- 4.1 CERC has periodically determined the forbearance price and the floor price for both Solar and Non-Solar RECs through its *suo-motu* orders. The previous forbearance price and the floor price for Non-Solar RECs determined by the CERC were Rs. 3300 and Rs. 1500 per REC respectively and for Solar RECs Rs. 5800 and Rs. 3500 respectively. The



said price was valid till 31.03.2017, and has been consequently decreased by the CERC vide the Impugned Order. The members of the Appellant association are claiming to be adversely affected by such downward revision and may force the uncertain future of becoming NPAs.

- 4.2 The CERC in the Impugned Order has deviated from its usual practice of calculating the floor and forbearance price by taking the CERC benchmark capital cost. CERC in all its previous Orders for determination of floor and forbearance price of RECs has taken into account the tariff determined for Solar PV and thermal plants in its own tariff Orders. The said methodology has been followed by CERC for the past six years and was also used for determining floor and forbearance price in the Previous REC Order.
- 4.3 CERC in the Impugned Order, for the first time, has used Bid Discovered Tariff for all States and Union Territories (UTs) in India. The Appellants have alleged that CERC has failed to provide any cogent reasoning for such a departure and ignored its own Tariff Orders which have been passed for determination of Solar PV and thermal plants and using bid-discovered tariff as reference tariff for determining floor and forbearance cost of RECs is in violation of Regulation 9 of the CERC REC Regulations.
- 4.4 CERC has taken reference of the tariff derived in the various bids under the Solar Park policy in the Impugned Order. The Scheme for Development of Solar Parks and Ultra Mega Solar Power Projects has been introduced by MNRE. The scheme aims to provide a huge impetus to solar energy generation by acting as a flagship demonstration facility to encourage project developers and investors, prompting additional projects of similar nature, triggering economies of scale for cost-reductions, technical improvements and achieving large scale reductions in GHG

emissions. MNRE on 12.12.2014 sanctioned setting up of at least 25 solar parks each with a capacity of 500 MW and above with a target of over 20,000 MW of solar power installed capacity in a span of 5 years with considerable Central Financial Assistance (CFA).

- 4.5 CERC in the Impugned Order has relied on Solar PV tariff discovered in auctions from the period January 2016 to February 2017 to arrive at an average bid tariff of Rs 4.65/kWh. It is the contention of the Appellant that CERC in doing so has relied on tariff discovered with respect to projects under the Solar Park Scheme and failed to take into account the differences between the solar projects set-up under the Solar Park Scheme and the other Solar Projects set-up under the REC framework, which form the majority of REC solar plants. The said differences, if taken into account result in a sharp rise in the average Solar PV tariff. Therefore the average bid tariff used by CERC is not reflective of the cost of generation of different renewable energy technologies falling under solar category, across States in the country which is to be considered by CERC while determining the price of RECs under Regulation 9 of the REC Regulations. Further, while referring to the price discovery for the calculation of the floor and forbearance price it is also to be noted that the average project size per bidder is 75 MW whereas under REC mechanism average project size is 2 MW. The said difference in the project size further diminishes the economies of scale.
- 4.6 The Appellants state that the Impugned Order is flawed as it departs from the earlier methodology of following the CERC RE tariff as a reference while determining the REC pricing. In the present scenario, if the difference between the tariff and APPC; and project viability tariff and APPC is calculated with the solar tariff of Rs.5.68 per KWh as determined by the CERC in Order dated 30.03.2016 in Petition No. SM/03/2016, then



the table for calculation of floor and forbearance Price will change drastically. Most importantly, if the previous CERC methodology for determining the forbearance price and floor price based on the **highest** difference between RE tariff and APPC and Project viability tariff and APPC is retained, the REC pricing band would be at 3.4.

- 4.7 As per the Appellants, the Impugned Order has dealt an adverse blow to the REC Industry. The members of the Appellant associations are facing erosion of 70% of its net worth while some members are on the verge of being declared a NPA due to drastic reduction in REC pricing. The importance of setting up and promoting a robust REC market cannot be denied and becomes clearer from a perusal of Para 1.7 of the statement of objects and reasons of CERC REC Regulations, wherein it has been reiterated that the concept of REC helps in addressing the mismatch between the availability of Renewable Energy sources.
- 4.8 It is submitted by the Appellants that the large number of pending RECs is not just a result of non-compliance by the obligated entities, but also the 'inaction of the SERCs. The SERCs have allowed waiver as well as carry-forward of the shortfall in RPO compliance by the obligated entities even though RECs were available in the market. It is further submitted that the REC market is already struggling to stay afloat and such decisions will cumulatively obliterate the demand for RECs. The Solar and No~Solar Power developers who have opted for the REC mechanism and in turn subsidized their power cost in the hope of recovering their costs through RECs, will not be able to recover costs or keep the power subsidized.
- 4.9 The appellants allege that the CERC by the Impugned Order has refrained from protecting the unsold REC inventory by providing a vintage multiplier or by creating separate markets for RECs issued till 31.03.2017 and RECs issued post 31.03.2017. The CERC has been guided by the

misinformation that REC trading has increased and showing an upward trend. Hence allegedly REC prices have been aligned to present market conditions. However, the truth of the matter is that solar REC trading has not improved/picked up as believed by CERC.

4.10 The appellants are aggrieved by the Impugned Order passed by the CERC to the extent of downward revision of REC prices (Floor/Forbearance prices) and have preferred these Appeals.

#### 5. QUESTIONS OF LAW:-

The questions of law, which are raised by the Appellants, in all the three Appeals are summarized as below:

- (a) Whether CERC has acted in contravention of Electricity Act, 2003 and the CERC REC Regulations by lowering the floor and forbearance price of the Solar & Non-solar RECs?
- (b) Whether CERC has acted in a reasonable & justifiable manner in changing the methodology for determining the floor and forbearance price for RECs?
- (c) Whether CERC has failed to take into account the status of RPO compliances by the obligated entities on a pan-India level and huge inventory of unsold RECs?
- (d) Whether CERC, putting an end to the Vintage Multiplier, has acted in contravention of Article 14 of the Constitution of India?
- (e) Whether the CERC failed to protect the financial viability of existing RE generators by further reducing the REC prices and possibility of projects being NPAs?
- (f) Whether the Impugned Order is flawed as it only benefits the defaulting obligated entities at the cost of the RE generators?

#### 6. The learned senior counsel, Shri Sanjay Sen, appearing for the Appellant has filed the following written submissions in Appeal No. 95 of 2017 :-

- 6.1 The CERC induced the Appellant generators to invest in solar generating stations under the REC scheme. As a result, after commissioning the solar



plants, the Appellant generators have sold electricity on a real time basis to Distribution Licensees at conventional energy rates (being APPC), or to third party under Open Access at negotiated rates. While, part of tariff was recovered at the time of sale, the recovery of renewable energy component of the energy was deferred so as to be recovered from the sale of REC at a price between forbearance and floor price determined by the Central Commission. Recovery of this renewable energy component/ attribute cannot now be denied or taken away.

- 6.2 Had the Central Commission not fixed the floor price, the Appellant generators would not have participated in the REC scheme so as to sell electricity on a real time basis at APPC and recover the renewable energy component of tariff on a deferred basis at the REC floor price. Since electricity has already been sold at conventional rate by the Appellant generators, the Central Commission does not have the ability to now deny the floor price for recovery of balance part of tariff.
- 6.3 The Central Commission at the time of introduction of RECs through a regulatory intervention provided both the forbearance price and the floor price. These regulatory interventions/ orders were issued in the exercise of Jurisdiction vested in the Central Commission under Proviso to Regulation 9(1) and Regulation 9(2). The first such Order was passed on 01.06.2010. The second order was passed on 23.08.2011 and the third order was passed on 30.12.2014. Clearly at each stage the Central Commission represented to the Appellant generator that they will recover the floor price, should they decide to set-up solar generating stations & participate in the REC scheme. The Appellant generators have acted upon such representation and have changed their position irreversibly by setting-up the solar generating stations and participating in the REC scheme.

- 6.4 The Central Commission was fully aware that REC market was not a real market (as is commonly understood), but was based on a fiction of breaking up the cost of power between brown component and green component and compliance of RPO by Obligated Entities. This aspect is also recognized by this Hon'ble Tribunal in paragraph 29 of its Order dated 16.04.2015 in Indian Wind Power Association, v. Gujarat Electricity Regulatory Commission & Ors., Appeal No. 258 of 2013 & Appeal No. 21 of 2014 & IA-28 of 2014. Since RECs were based on compliance, for the Central Commission to now argue on market reality basis is wrong and without any merit.
- 6.5 RECs cannot be compared with any commodity such as shares or goods sold in the free market. Had it been so, there would have been no requirement to have intricate regulatory interventions from time to time. Shares do not have any floor or forbearance price determined by either capital market regulator or the stock exchanges. Similarly any good/stock available in a store is not regulated in a manner in which RECs are. If the RPO were not mandatorily introduced, RECs would not have existed in the first place. REC is a fiction for the reason that renewable energy attributes are traded at prices determined on basis of the principles provided in Regulation 9(2) of the REC Regulations, 2010. These principles cannot now be ignored and casually denied as if RECs are equivalent to a common commodity such as soaps or shampoo.
- 6.6 The Central Commission having admitted that the REC floor price represents the recovery of cost of generation, i.e. it is a component of tariff, the Central Commission failed to make an enquiry on whether or not the generator has recovered the cost of generation in a reasonable manner as provided in section 61 of the Electricity Act, 2003. The Impugned Order is motivated with the urge to clear old REC stock without addressing the issue of non-compliance of RPO Regulations by



the Obligated Entities, which led to accumulation of unsold RECs. Therefore, to abandon the viability principle for determination of REC floor price in favour of an alleged market liability, based on admitted non-compliance of mandatory regulations, is unacceptable.

- 6.7 The Impugned Order benefits the defaulter as it gives incentive to a defaulting Obligated Entity who, in violation of mandatory regulations is not buying REC at the price on which they were generated. Now such defaulter can buy RECs at a much lower price, at the cost of generator who has not recovered the cost of generation.
- 6.8 The Central Commission has by passing the Impugned Order affected vested rights. The Impugned Order has retrospective effect for the reason that electricity was sold on real time basis at conventional energy prices, while the recovery of renewable energy attributes was deferred. The renewable energy component was attributed a certain value on the date of sale of electricity. The Appellant generators therefore have a vested right to recover cost at the floor price. To deny the same now after duration of 4 years by changing the goal post constitutes denial of tariff of the renewable energy component of the past. Hence the Impugned Order has retrospective effect for which it is wrong and is required to be set-aside.
- 6.9 The Regulation 9 stipulates that the price of RECs shall be discovered in the power exchange and it is only the proviso which provides for the Central Commission to set a floor and a forbearance price. In this context, it is argued by Respondents that the proviso is not a Rule. A proviso cannot be elevated to a right. This argument is wrong for the reason that the proviso was inserted along with the Rule for purposes enumerated in the Statement of Reasons. The reason why the proviso was introduced was to ensure "threshold level of revenue certainty".
- 6.10 Further, the proviso is taken forward and the manner in which the proviso will be worked out is in Regulation 9(2), which is a substantive



regulation. Therefore, it is not correct to say that the proviso is not a Rule. If that argument is accepted, then there is no scope for Regulation 9(2) to exist. Regulation 9(2) is not a proviso.

- 6.11 Reliance in this context is placed on the Constitutional Bench Judgment of the Hon'ble Supreme Court in *Commissioner of Commercial Taxes v. Ramkishan Shrikishan Jhaver, reported in (1968) 1 SCR 148*. Reliance is also placed on the Judgment of the Hon'ble Supreme Court in *S. Sundaram Pillai v. V.R. Pattabiraman, reported in (1985) 1 SCC 591*.
- 6.12 In any event, whether it is a proviso or not, it is a substantive regulation that vests jurisdiction on the Central Commission to provide for floor price and forbearance price. In exercise/ discharge of such jurisdiction, floor price and forbearance price were introduced.
- 6.13 The Central Commission in its order dated 01.06.2010 proceeded to determine the floor price of RECs based on the viability principle. In this context, the Central Commission considered the following aspects:
- a) RE target
  - b) Additional RE capacity addition
  - c) Additional generation at State level using specific RE technology
  - d) Cost of generation/ RE tariff
  - e) average power purchase cost

The present determination in the impugned order is at variance with Regulation 9(2). On this ground also the order requires to be set aside.

- 6.14 Therefore, the proviso has been worked out and implemented through orders. So, there is no merit in the argument that it is a proviso and not a Rule, because the proviso has been acted upon. Once it is acted upon and the floor price has been set in various orders issued from time to time, under the REC scheme the Appellant generators were induced to sell the brown component of power at conventional rates with an assurance of recovery under "the revenue certainty principle at the floor price". Pursuant to the inducement, parties have changed their position and have



indeed sold power at conventional energy rates and are now awaiting recovery of the balance component of tariff through the REC mechanism.

- 6.15. It is too late for Central Commission to now say that the proviso is not a Rule because Central Commission has acted upon the proviso for a period of over six (6) years resulting in parties investing under the REC scheme and selling power by splitting the brown and the green components, where the recovery of costs for the green component is linked to sale of REC.
- 6.17. The Central Commission itself admitted that since the generators had not recovered the cost of generation on account of inability to sell the RECs, extension of the validity period of the RECs were given from time to time. The recognition that there is a vested right in the floor price is intrinsic in the orders issued by the Central Commission on REC pricing including Order dated 30.12.2014 in Petition No. 16/SM/2014. If there was no vested right to recover tariff, what was the need to introduce a vintage multiplier. It has been pointed out that vintage multiplier was issued by a regulatory order of the Central Commission and not through regulations. Regulations came subsequently. The Regulations introducing the Vintage Multiplier became effective on 01.01.2015, while the order providing Vintage Multiplier is dated 30.12.2014.
- 6.17 Thus, the vested right of the Appellant generators cannot be taken away by the Central Commission. Doing so would be contrary to established principle of promissory estoppel. Reliance in this context to support the contention of the Appellant that the Central Commission was bound by the principle of promissory estoppel is placed on the following Judgments:
- i) **Union of India v. Godfrey Philips India Ltd., reported in (1985) 4 SCC 369, wherein it was held as under:**



“11. The resultant position was summarised by this Court in Motilal Sugar Mills case [(1979) 2 SCC 409: 1979 SCC (Tax) 144 : (1979) 2 SCR 641].

- ii) The doctrine of promissory estoppel as explained above was also held to be applicable against public authorities as pointed out in Motilal Sugar Mills case [(1979) 2 SCC 409 : 1979 SCC (Tax) 144 : (1979) 2 SCR 641] . This Court in Motilal Sugar Mills case [(1979) 2 SCC 409 : 1979 SCC (Tax) 144 : (1979) 2 SCR 641] quoted with approval the observations of Shah, J. in Century Spinning and Manufacturing Co. Ltd. v. Ulhasnagar Municipal Council [(1970) 1 SCC 582 : AIR 1971 SC 1021 : (1970) 3 SCR 854].
- iii) *The Court refused to make a distinction between a private individual and a public body so far as the doctrine of promissory estoppel is concerned. There can therefore be no doubt that the doctrine of promissory estoppel is applicable against the Government in the exercise of its governmental, public or executive functions and the doctrine of executive necessity or freedom of future executive action cannot be invoked to defeat the applicability of the doctrine of promissory estoppel.*
- iv) State of Punjab v. Nestle India Ltd., reported in (2004) 6 SCC 465, wherein it was held as under:
- The Court directed an exemption to be granted on the basis of the principles of promissory estoppel even though Rule 8 of the Central Excise Rules, 1944 required exemption to be granted by notification.
- v) Southern Petrochemical Industries Co. Ltd. v. Electricity Inspector & ETIO, reported in (2007) 5 SCC 447 at page 495, wherein it was held as under:
- “121. The doctrine of promissory estoppel would undoubtedly be applicable where an entrepreneur alters his position pursuant to or in furtherance of the promise made by a State to grant inter alia exemption from payment of taxes or charges on the basis of the current tariff. Such a policy decision on the part of the State shall not only be expressed by reason of notifications issued under the statutory provisions but also under the executive



instructions. The appellants had undoubtedly been enjoying the benefit of (sic exemption from) payment of tax in respect of sale/consumption of electrical energy in relation to the cogenerating power plants.

128. In MRF Ltd. [(2006) 8 SCC 702] it was held that the doctrine of promissory estoppel will also apply to statutory notifications.

It is opined that doctrine of promissory estoppel also preserves a right. A right would be preserved when it is not expressly taken away but in fact has expressly been preserved.

- 6.18 The regulatory scheme also represented to the investors that the Obligated Entities who are required to buy renewable power will purchase such renewable power or RECs within a defined timeframe in order to achieve this, each State Commission was required to adopt its own RPO regulation in terms of the draft model regulation proposed by the Forum of Regulators. However, after the investments were made, the Central Commission and other regulatory institutions including the Appellate Tribunal realized that the Obligated Entities were not purchasing RECs and as a result the REC inventory remained unsold. In this context, reference may be made to the following orders passed by the Central Commission as well as this Hon'ble Tribunal from time to time, i.e., 09.12.2012 in petition no. 266/SM/2012; order dated 11.12.2013 in petition no. 266/ SM/ 2012, order dated 16.04.2015 in appeal no. 258 of 2013.
- 6.19 In fact, the Appellant Association has filed multiple cases before this Hon'ble Tribunal as well as respective State Commissions against waiver and carry-forward of RPO allowed by State Commissions. These matters which are till date pending are reflective of the situation of RPO non-compliance in the Nation. The Appellant Association today is being made

to suffer due to the inaction of respective State Commissions and the Obligated Entities.

- 6.20 The Ministry of Power notified the i.e. Ujwal Discom Assurance Yojana Scheme ("UDAY Scheme") vide Office Memorandum No. 06/02/2015-NEF/FRP, dated 20.11.2015 for financial revival of State owned DISCOMS, which have a cumulative debt of over Rs 4.37 lakh crore. Paragraph 9 of the Uday Scheme provides that the State owned Distribution companies opting for UDAY Scheme will comply with the Renewable Purchase Obligation (hereinafter "RPO") outstanding since 1st April, 2012, within a period to be decided in consultation with the Ministry of Power, and fix a period within which the DISCOMS will meet their RPO targets before becoming eligible to avail the benefits of the Scheme. However, the Ministry of Power has signed MOUs with State Governments and respective DISCOMS without deciding a timeline for compliance of RPO in violation of Paragraph 9 of the UDAY scheme.
- 6.21 The Central Commission in the Impugned Order has while acknowledging the fact that RECs continue to remain unsold on account of failure/ default of the Obligated Entities, failed to appreciate that the old solar projects linked to the REC scheme had not recovered the cost of power which is attributable to the cost of Renewable energy component.
- 6.22 The Central Commission has failed to analyze the under recovery of cost for sale of electricity on account of stranded REC inventory. The Central Commission has taken a stand in complete departure from its earlier stand/ representations made to investors of solar projects to hold as follows:

**"The Commission has considered the suggestions and feels that if at this juncture, a multiplier is provided, there would be sudden surge in stock of RECs on the exchange and this shall imply that the existing inventory shall face even greater difficulty in getting cleared. It is also understood that investing in a market comes**



**with its own risks and the Commission believes that such risks are accounted for by investors. The Commission feels that the market must reflect the current ground realities.”**

- 6.23 The Central Commission has now moved from the viability principle adopted by it to a principle allegedly linked to market/ ground realities. The present finding of the Central Commission is without any analysis of the ground reality concerning old solar projects, who have not recovered the cost of power generation and sale. In fact, the several of the members of the Appellant association are on the verge of bankruptcy on account of their failure to discharge the debt-service obligation.
- 6.24 For the reasons stated above, to suggest that the Central Commission is merely providing a floor price as an industry regulator is wrong because the floor price was provided with a particular object/ purpose. The floor means the minimum assured recovery. Why would an industry regulator promise a minimum assured recovery.
- 6.25 It is the case of the Appellant that they are entitled to recover tariff under the statute. They have recovered part of the tariff by sale of brown energy, while the balance tariff had to be recovered through the REC route, the minimum tariff that is available under the REC route is the floor price. This cannot be denied by the regulator. Therefore, the argument made that price fixation cannot be an inducement is wrong because the REC scheme itself is an inducement, which induces splitting of tariff. Based on the floor price, the generator has sold power at conventional power rates. It is clarified that the component of tariff cannot be a concession. The right to recover tariff is a right protected under the statute. Once the regulator recognizes that tariff has not been recovered, which he has in several orders granting extension of RECs, he has a duty thereafter, to ensure recovery of tariff for those projects who have participated in the REC scheme.



- 6.26 The Central Commission has relied upon the current solar tariff that has been discovered in the auctions conducted during January 2016 to February 2017. This approach is wrong as the Central Commission itself in its order dated 23.08.2011 had rejected the NVVN discovered solar tariff (through bids) and had relied upon the tariff determined by Central Commission in terms of the Central Commission (Terms and Conditions for Tariff determination from Renewable Energy Sources) Regulations, 2010 and the subsequent amendments. However, in the Impugned Order, Central Commission goes back and picks up tariff discovered in auctions. This somersault, particularly when vested rights are affected is not permissible.
- 6.27 Further, Central Commission has deviated from its established practice of consulting with Forum of Regulators in contravention of Regulation 9(1) of the REC Regulations, 2010, which was followed even in the previous *Suo-Motu* Orders. There has been no real consultation with Forum of Regulators and Central Commission has only consulted with POSOCO in a limited manner.
- 6.28 Further on the issue of Project Specific Tariff Regulation, it is necessary to clarify that Central Electricity Regulatory Commission (Terms and Conditions for Tariff determination from Renewable Energy Sources) Regulations, 2017 were notified on 17.04.2017, i.e., after the impugned order was issued on 30.03.2017.
- 6.29 In light of the aforesaid submissions, it is respectfully submitted that the present Appeal be allowed and the impugned order be set aside. The matter necessarily has to be remanded back to the Central Commission to determine the floor price in a manner that ensures viability of the old generators who have already sold their power before revision of the floor price and/ or removal of the Vintage Multiplier.



7. **The learned counsel, Shri Vishal Gupta, appearing for the Appellant has filed the common written submissions in Appeal Nos. 105 of 2017 and 173 of 2017 as follows:-**

- 7.1 The Central Commission notified the Central Electricity Regulatory Commission (Terms and Conditions for recognition and issuance of Renewable Energy Certificate for Renewable Energy Generation) Regulations, 2010 dated 14.01.2010 (hereinafter referred as “**the REC Regulations**”) in exercise of its powers conferred under sub-section (1) of Section 178 and Section 66 read with clause (y) of sub-section (2) of Section 178 of the Electricity Act, 2003 for the development of market in power from Non-Conventional Energy Sources by issuance of transferable and saleable credit certificates.
- 7.2 Considering the above scheme, objective and intent, the REC Regulations act as a self – contained and uniform pan-India code for all matters related to recognition and issuance of REC for renewable energy generation. The REC Regulations further lay down that there shall be two categories of certificates, viz., solar certificates issued to eligible entities for generation of electricity based on solar power as a renewable energy source; and non-solar certificates, issued to eligible entities for generation of electricity based on renewable energy sources other than solar. It further provides that the solar certificate shall be sold to the obligated entities to enable them to meet their renewable purchase obligation towards solar power; Whereas, non-solar certificates shall be sold to the obligated entities to enable them to meet their obligation for purchase from renewable energy sources, other than solar. The members of the Appellants’ Association in the instant Appeals are covered under the non-solar category.

7.3 Regulation 5 of the REC Regulations as amended from time to time stipulates eligibility of generating companies and registration certificates.

The salient points are as under:

(a) A generating company engaged in generation of electricity from renewable energy sources shall be eligible to apply for registration for issuance of and dealing in the renewable energy certificates (RECs) if it fulfils the following conditions:

- It has obtained accreditation from the State Agency;
- It does not have any power purchase agreement for the capacity related to such generation to sell electricity, with the obligated entity for the purpose of meeting its renewable purchase obligation, at a tariff determined under section 62 or adopted under section 63 of the Act by the Appropriate Commission.
- It sells the electricity generated either (i) to the distribution licensee of the area in which the eligible entity is located, at the pooled cost of power purchase of such distribution licensee as determined by the Appropriate Commission, or (ii) to any other licensee or to an open access consumer at a mutually agreed price, or through power exchange at market determined price.
- It does not sell electricity generated from the plant, either directly or through trader, to an obligated entity for compliance of the renewable purchase obligation by such entity.

7.4 Regulation 7 of the said REC Regulations provide that the eligible entities shall apply to the Central Agency for Certificates within three months after corresponding generation from eligible renewable energy projects and the application for issuance of certificates may be made on fortnightly basis, i.e., on the first day of the month or on the fifteenth day of the month. The said regulation also stipulates that the Certificates shall be issued to the eligible entity after the Central Agency duly satisfies itself that all the conditions for issuance of Certificate, as may be stipulated in the detailed procedure, are complied with by the eligible



entity. The Certificates are to be issued by the Central Agency within fifteen days from the date of application by the eligible entities.

- 7.5 The Certificates are to be issued to the eligible entity on the basis of the units generated and injected into the Grid; and duly accounted in the Energy Accounting System as per the Indian Electricity Grid Code or the State Grid Code, as the case may be, and the directions of the authorities constituted under the Act to oversee scheduling and dispatch and energy accounting, or based on written communication of distribution licensee to the concerned State Load Dispatch Centre with regard to the energy input by renewable energy generators which are not covered under the existing scheduling and dispatch procedures. Each Certificate issued represents one Megawatt hour of electricity generated from renewable energy source.
- 7.6 The aforesaid REC Regulations also prescribe in Regulation 8 that unless otherwise specifically permitted by the Central Commission by order, the Certificates shall be dealt only through the Power Exchange and not in any other manner. The Certificate issued to eligible entity by the Central Agency may be placed for dealing in any of the Power Exchanges as the Certificate holder may consider appropriate, and such Certificate shall be available for dealing in accordance with the rules and byelaws of such Power Exchange. Provided that the Power Exchanges shall obtain prior approval of the Central Commission on the rules and byelaws including the mechanism for discovery of price of the Certificates in the Power Exchange. Further, the RE Certificate once issued are to remain valid for three hundred and sixty five days from the date of issuance of such Certificate.
- 7.7 Regulation 9 of the REC Regulations *inter alia* provide that the price of Certificate shall be as discovered in the Power Exchange, provided that the Central Commission may, in consultation with the Central Agency

and Forum of Regulators from time to time provide for the floor price and forbearance price separately for solar and non-solar Certificates.

- 7.8 Considering the above statutory framework, the Central Commission vide Suo-Motu order dated 01.06.2010 in petition No. 99/2010 determined the Forbearance and Floor Price for control period of 2 years i.e. upto FY 2011-12.

The Forbearance and Floor Price determined in terms of the above order dated 01.06.2010 for non-solar category REC for a control period of two years i.e., upto FY 2011-12, was as under:

REC Price	Non-Solar REC (Rs./MWh)
Forbearance Price	3,900
Floor Price	1,500

- 7.9 Pertinently, the principle followed for determining the forbearance and floor price for REC under the above order was continued by the Central Commission upon expiry of the earlier control period vide another *suo-motu* order dated 23.08.2011 in petition no. 142/2011. The Central Commission once again determined the forbearance and floor price for REC framework for the next control period i.e. from 1<sup>st</sup> April 2012 onwards.
- 7.10 By the above stated REC pricing order dated 23.08.2011, the Central Commission determined forbearance and floor applicable from 1<sup>st</sup> April 2012 onwards for a control period of 5 years (i.e., upto FY 2016-17) in order to reduce regulatory uncertainty and provide comfort to investors and lenders. The Central Commission had at the time also appreciated the need for long term visibility for certainty and comfort for financial closure of the projects. The Forbearance and Floor Price determined in terms of the above order dated 23.08.2011 for non-solar category REC



for a control period of five years i.e., FY 2012-13 to FY 2016-17, was as under:

<b>REC Price</b>	<b>Non-Solar REC (Rs./MWh)</b>
Forbearance Price	3,300
Floor Price	1,500

7.11 The Floor Price which guarantees recovery of the cost of generation considering the basic minimum requirement for ensuring viability of renewable energy project set up by the members' of the Appellants' Association was pegged at the same level without any variation or change.

7.12 The Central Commission however vide the impugned Order dated 30.03.2017 for the control period starting 01.04.2017, has much to the prejudice of the members' of the Appellants' Association not only reduced the Forbearance and Floor Price for the REC framework, but done so with retrospective application and thereby made it applicable on all existing renewable energy projects set up at an earlier point in time which continue to have unsold RECs. The reduced Floor and Forbearance price as per the impugned Order is as under:

<b>REC Price</b>	<b>Non-Solar REC (Rs./MWh)</b>
Forbearance Price	3,000
Floor Price	1,000

7.13 This reduction is moreover, also based on a totally new methodology for determination of floor and forbearance price of REC in significant departure to the principle followed uniformly under the previous REC pricing orders.

7.14 It is the Appellants' contention in these appeals that the reduction of REC pricing by adopting new methodology and making it applicable retrospectively is improper and without considering and / or adhering to the provisions of the Electricity Act, National Tariff Policy and the REC

Regulations, which stood acted upon and recognise a vested right in favour of the members' of the Appellants' Association to have their existing renewable energy projects continue to be governed under and/or in terms of the principles followed in earlier REC Pricing Orders dated 01.06.2010 and 23.08.2011.

- 7.15 By way of the impugned Order dated 30.03.2017, the Central Commission has failed to appreciate in proper perspective the well acknowledged fact that the existing renewable energy projects already had sizeable unsold inventory of REC caused solely on account of lack of Renewable Purchase Obligation (RPO) enforcement by the States. These renewable energy projects were set-up by generators assuming the floor and forbearance price at a particular level.
- 7.16 The failure of regulators to enforce compliance of RPO is being borne by these generators for no fault of theirs; Whereas, the benefit of price reduction is being given to obligated entities that have repeatedly failed to follow the requirement of the law and have not fulfilled their RPO obligations. The effect of the impugned Order is that these obligated entities will be able to meet their past obligations at a much lower cost. The Central Commission despite acknowledging in the impugned Order that there has been lack of RPO enforcement has however, inter-alia, observed as under:

**“Analysis & Decision:**

*10. Many stakeholders have objected to the loss of value of existing inventor. Losses to the tune of INR 1855 crores have been estimated. They have highlighted that the benefit of the price reduction will primarily go to those obligated entities that have not followed the requirement of law so far and have not fulfilled their RPO obligations. Few stakeholders have also suggested that this floor price should be applicable to future inventory only. Alternatively, others have suggested to protect the value of the inventory of RECs accumulated by the RE projects by providing an appropriate vintage multiplier on the inventory. Some generators have argued that they are unable to recover a*



component of their tariff and have also lost earnings by way of interest on such money, while those RE generators that have PPAs are able to recover full RoE as well. Many developers have pleaded that their projects will become unviable.

11. The Commission has analysed the demand supply situation of REC market. Currently, REC inventory to the tune of 1.85 crores is pending for trade at the power exchange, of which 1.37 crores are non-solar RECs while 48 lakhs are solar RECs. This has historically been due to lack of RPO enforcement. However, over the past few months, the demand for RECs has increased, and is showing a positive trend. Specifically, months of January and February have seen several Discoms purchase RECs from the market, pushing up the volume of RECs sold to over four times the preceding months:

....

12. The Commission is of the view that the price of trading must also reflect the current market situation. If the green component is unreasonably priced, the obligated entities would get further disinterested from the REC market, and the REC inventory will continue to pile up. Hence, the REC price must move with the market price of renewable power.

...

14. Accordingly, the Commission has decided to align the REC floor and forbearance prices with the prevailing market conditions, in terms of tariffs, APPC, etc.”

- 7.17 The Central Commission by reducing the floor price of non solar RECs completely lost sight of the recognized fact that the determination of REC floor price and forbearance price is a determination of opening of tariff for the generating companies and any such determination cannot have retrospective effect. The Central Commission in Para 35 of the impugned order has stated as follows: -

**“35. That, the revised floor price (Rs. 1000/- per MWh for solar and non solar) shall be applicable to all RECs in the market.”**

- 7.18 The above makes it clear that the Central Commission while noting in Para 11 that REC inventory to the tune of 1.85 crores is pending for trade, applied floor price as determined in the impugned order applicable to all



the RECs in the market, making the said price applicable to the RECs issued in the past as well and thereby making the order retrospective in operation.

- 7.19 The appellants are aggrieved by such retrospective application of the price of REC as it has the effect of reducing the tariff for these generators. A generator participating in REC mechanism recovers the cost of generation by a two part tariff, one by selling physical component of electricity at APPC rate to the Distribution licensees of the State and the other part by sale of RECs at the power exchanges. This fact has been recognized by the Central Commission in its counter affidavit filed in the above mentioned appeals.
- 7.20 The RECs issued to the renewable energy generators before passing of the impugned order were to be traded at a floor price of Rs. 1500 per MWh which would have resulted in recovery of cost of generation for the said generating companies. However, due to a huge inventory of RECs remaining unsold in the past 3 years before the passing of the impugned order these generating companies could not recover their cost of generation. The reduction in floor price of RECs and making it applicable to all the RECs in the market which includes the RECs issued to these generating companies before the passing of the impugned order clearly results in these generating companies being forced to sell RECs at the floor price of Rs. 1000 per MWh which means they will not be able to recover the cost of generation.
- 7.21 It is relevant to point out that detailed submissions were made about this aspect before the Central Commission by the Appellant in its submissions. The said submissions may be read as part and parcel of the instant submissions. A perusal of Para 12 of the impugned order clearly shows that the Central Commission has gone on factors which are extraneous to Regulation 9 (2) of the REC Regulations which provides



for guiding principles for determination of floor price and forbearance price of RECs.

- 7.22 During the course of hearing it has been submitted on behalf of the Central Commission that since Regulation 9 (1) provides for price of RECs to be determined at the power exchanges, the Central Commission is entitled to look at the market realities of RECs. The said submission is totally erroneous as once the Central Commission chooses to exercise its powers under the proviso to 9 (1) for determination of floor price and forbearance price of RECs, it has to function under Regulation 9 (2) and Regulation 9 (1) has no relevance in this regard. It is only when the Central Commission chooses not to exercise its powers under the proviso to Regulation. 9 (1) the floor price and forbearance price is totally dependent on the market realities and the Central Commission will not determine the floor price or the forbearance price of the RECs.
- 7.23 During the course of hearing it has been submitted on behalf of the Central Commission that it has the discretion to determine or not to determine the floor price and no one has the right to ask the Central Commission to necessarily determine the floor price or the forbearance price of RECs. It is submitted that this submission is totally flawed as the Central Commission has already chosen to exercise its powers under the Regulation 9 (1) and it is not a case where the Appellants are seeking a direction from the Hon'ble Tribunal against the Central Commission to exercise powers under the proviso. The Central Commission having exhausted its powers under the proviso to Regulation 9(1) cannot submit that it has a discretion to exercise such powers.
- 7.24 Further, no submissions have been advanced on behalf of the Central Commission as regards to the retrospective application of the floor price and forbearance price determined under the impugned order. It is submitted that the mandate to promote generation of electricity from

renewable energy sources continues under Electricity Act, 2003 and there was no occasion for the Central Commission to reduce the floor price of the old RECs which already stood determined under the 2011 order. The reduction in the floor price of old RECs by the impugned order which results in generating companies not being able to recover even their cost of generation runs completely contrary to the objects of the Electricity Act, 2003 to promote generation of electricity from renewable energy sources.

- 7.25 The Central Commission further failed to appreciate that the previous fixation of floor and forbearance price under the earlier REC pricing orders along with the statutory obligation to promote renewable energy sources and enforcement provision with respect to renewable purchase obligation together form a composite scheme and establish a vested right in renewable energy generators and a corresponding duty on the obligated entities and therefore the reduced price, as has been fixed by the Central Commission vide the impugned Order dated 30.03.2017, even if otherwise valid, can only apply to new RECs. The members of the Appellants' Association are further aggrieved as the Central Commission completely failed to appreciate that neither the Electricity Act, 2003 nor its own REC Regulations empowered it in any manner to give retrospective effect and application to REC pricing order and change dispensation for all existing RECs under a broad sweep.
- 7.26 The Central Commission failed to appreciate that while notifying the REC Regulations, it was never envisaged that RECs will not be traded or the REC market will remain stagnant. It is for this reason, the validity of RECs was originally only for a period of 365 days. However, due to poor RPO compliance, the obligated entities failed to buy RECs and RECs started accumulating and admittedly, at the time of passing of the impugned Order, approximately 1.85 crores RECs remained unsold



which led to a situation where the validity of RECs was extended to about three years and vide the impugned Order, the same has been further extended till 31.03.2018.

- 7.27 The Central Commission has however failed to appreciate that the application of the impugned Order on all RECs will lead to a situation where the existing renewable energy generators will not be able to recover their viability tariff for their projects rendering them financially unviable and force them into bankruptcy. Pertinently, in the earlier pricing orders, validity was extended but floor price was kept firm-uniform, unlike the impugned Order.
- 7.28 Section 61(h) of the Electricity Act further mandates that even while fixation of tariff promotion of renewable energy must be kept into account. Therefore the defaulting obligated entities which failed to fulfil their respective renewable purchase obligation ought not to have been permitted to pass through the penalty to their consumers. Any penalty for non-fulfilment of renewable purchase obligation cannot be levied in a pass through manner. However the Central Commission has failed to appreciate the same. The liability crystallised on the obligated entities cannot be done away with by using the impugned Order as that would then defeat the entire objective of introducing the RPO mechanism and REC mechanism in the first place.
- 7.29 The Central Commission in terms of judicial precedent well set by this Hon'ble Tribunal in Appeal No. 258 of 2013 vide judgement and Order dated 16.04.2013 and OP No. 1 of 2013 vide judgment and Order dated 20.04.2015 ought to have at the very least censured and /or passed strictures against the obligated entities for their non-compliance instead of reducing the Floor and Forbearance Price by inter-alia observing that otherwise these obligated entities would be disinterested.



- 7.30 The Central Commission has by way of the impugned Order dated 30.03.2017 not provided a vintage multiplier for any technology, which has adversely impacted the backlog of existing inventory of RECs as well as future REC for projects which made investments early on. The Central Commission has wrongly held that if a multiplier is provided there would be sudden surge in stock of RECs on the exchange and/or that it may imply the existing inventory facing even greater difficulty in getting cleared. The Central Commission has further without appreciating the true market scenario erroneously observed that investing in a market comes with its own risks and that such risks are accounted by investors
- 7.31 The Central Commission had in fact provided a vintage multiplier to solar RE Generators vide its order dated 30.12.2014 in Petition No. SM/016/2014. However, this objective has been ignored this time around by way of the impugned order as despite reducing the Floor Price, the Central Commission has not provided a vintage multiplier to protect the RE Generators. In the circumstances, the Central Commission has reduced the Floor Price without considering the actual market and ground realities.
- 7.32 The reasoning of the Central Commission is erroneous and completely ignores the difficulties being faced by the generators on account of lack of compliance of RPO by obligated entities. The Central Commission has further failed to appreciate that even the National Tariff Policy notified on 28.01.2016 under clause 6.4 specifically provides for linking of a REC project with the timing of its commissioning and should have considered the change of prices of RE based technologies with passage of time by providing higher or lower number of RECs for the same level of generation based on year of commissioning of various RE projects.
- 7.33 The Central Commission has not considered the lack of RPO compliance, sizeable inventory of unsold RECs of existing renewable energy projects



and the minimum viability requirement for these projects considering their cost of generation at the time they were set-up would have weighed in the mind of the Central Commission as important factors to consider and consequently the reduced floor price ought not to have been made applicable on the existing renewable energy projects and particularly on the unsold inventory of such projects.

- 7.34 While determining the REC floor and forbearance prices for non-solar technologies the Central Commission has also wrongly assigned weightage to various technologies on the basis of their respective installed capacity in MW terms as it does not represent the actual share of that technology in the REC market. It is a known fact that the Capacity Utilisation Factor (CUF) are different for different RE technologies. As per its own RE tariff Regulations, the Central Commission has specified CUF as 23%, 70%, 80% and 45% for Wind, Cogeneration, Biomass and Small Hydro based RE generating plants, respectively. Considering the above CUF, the REC generated from Wind power projects are far less than the REC generated from a biomass power project of similar capacity. Therefore to get a more realistic scenario of REC market, it was necessary for the Central Commission to consider REC generated figures for various technologies and accordingly weightage should have been assigned while determining the REC floor and forbearance price.
- 7.35 The Central Commission has further arbitrarily changed the methodology used for determination of floor and forbearance price which was earlier based on the National RPO target set up under the NAPCC issued by the Government of India, the tariff determined by the Central Commission under its RE tariff Regulations and Average power procurement Cost (APPC) of various state distribution licensees. In the impugned Order dated 30.03.2017 the Central Commission while determining the REC pricing has wrongly considered and used the RE tariff determined by a



few state commissions and APPC. Further Central Commission has not given any relevance to the national target for RPO defined under NAPCC. It is submitted that this approach is contrary to a national level framework promulgated in the form of REC and therefore is liable to set-aside.

- 7.36 The Central Commission arbitrarily discontinued the practice of using technology specific tariff determined under its various orders for the purpose of determination of REC Prices. It is pertinent to point out here that the Central Commission vide its order dated 29.04.2016 in Petition No. SM/ 03/2016 *suomoto* determined the tariff for various RE Technologies. The Tariff so determined was applicable to the projects till 31.03.2017 and therefore, the same would have continued to apply for the determination of REC Price. This Approach would have been consistent with the Central Commission's REC regulations.
- 7.37 The Central Commission has further failed to appreciate that many of the State Commissions have still not determined the APPC and the distribution licensee of such states are signing REC based PPAs as per their own whims and fancies. To make things worse, some of the State Commissions have put a cap on APPC prices and therefore the generators are not even getting the APPC prices as per the definition provided in the REC Regulations. Similarly, in some states, the distribution licensees executed PPAs at constant APPC. These important and prevalent market scenarios have not been considered in the impugned Order.
- 7.38 The Central Commission vide the impugned order has further prejudiced the RE Generators by inter alia directing its staff to examine the need for floor price going forward after duly factoring in the current and emerging market conditions. It is stated that taking away/ removing the floor price would virtually lead to a situation where the obligated entities would be reluctant to comply with their Renewable Purchase Obligation in



anticipation of further reduction in the REC prices. This will lead to a situation of speculation in the market, adversely affect the competition and incentivise further default by the obligated entities.

7.39 The impugned Order dated 30.03.2017 being contrary to the Electricity Act, 2003, National Tariff Policy as well as the REC Regulations ought to be set-aside and the instant appeals be allowed.

**8. The learned counsel, Shri Nikhil Nayyar, on behalf of the Central Electricity Regulatory Commission has filed the following written submissions in the batch of Appeal No.95 of 2017, Appeal No. 105 of 2017 & Appeal No. 173 of 2017**

8.1. **Broadly** four issues have arisen during the course of arguments by the counsel for the Appellants and the 'Central Commission'.

- **Vested right to get a fixed Floor Price**
- **Promissory Estoppel**
- **Vintage Multiplier**
- **Methodology and Principles of Determination of Floor and Forbearance Price**

**Vested Right To Get A Fixed Floor Price**

8.2 The Central Commission in exercise of its powers under Section 66 read with Section 178 (2) (y) of the Electricity Act, 2003 (hereinafter referred to as the 'Act') notified the Central Electricity Regulatory Commission (Terms and Conditions for Recognition and Issuance of Renewable Energy Certification for Renewable Energy Certificate) Regulations, 2010 (hereinafter referred to as the "REC Regulations"). Regulation 9(1) of the REC Regulations provides that:

*"9. Pricing of Certificate*

*(1) The price of Certificate shall be as discovered in the Power Exchange:*

*Provided that the Commission may, in consultation with the Central Agency and Forum of Regulators from time to time provide for the floor price and forbearance price separately for solar and non-solar*

*Certificates.*” (Emphasis Supplied)

- 8.3 The limited role of the Central Commission to provide for the Floor and Forbearance Price for RECs flows from the Proviso to Regulation 9. The proviso uses the word ‘*may*’; thereby making such fixation of Floor and Forbearance Prices discretionary. The proviso cannot control the main provision in manner that Appellants can claim a vested right to get a specific Floor Price.
- 8.4 The Central Commission after due consultation with the Central Agency (POSOCO-NLDC) and Forum of Regulators passed the Impugned Order providing for the Floor and Forbearance Prices for both Solar and Non-Solar RECs.
- 8.5 The mandate of the Central Commission is reflected in Sections 61 and 66 of the Act. Section 61 provides that the Central Commission shall be guided by the principles and methodologies specified by the Central Commission including safeguarding of consumers’ interest, commercial interest, promotion of co-generation from renewable sources, reflection of cost of supply of electricity etc. Section 66 provides for the development of the market. Thus, the Central Commission is required to take a holistic view of the market and balance the interests of all the stakeholders. Appellants’ reliance on these provisions to claim a vested right to a fixed Floor Price is misconceived.
- 8.6 REC is not issued with a fixed price on it. It is issued to an eligible entity on the basis of the units of electricity generated from a renewable energy source. An REC merely represents one Megawatt Hour of electricity generated from a renewable energy source. (See Regulation 7(4) & (5)). Pricing of an instrument cannot be *dehors* the cost of the commodity it represents. It is a market based instrument and its pricing is governed by the cost, demand and supply of the electricity generated from renewable



energy source.

- 8.7 A comparison of REC Floor and Forbearance Price over the years since the inception of REC framework, as provided in the table below, shows a consistent downward trend:

**Solar REC Floor and Forbearance Prices**

Year	Order	Floor Price (Rs/Mwh)	Forbearance Price
FY 2010- FY 2012	Petition No.99/2010(SM)dated 01.06.2010	12,000	17,000
FY 2012- 30.12.2014	Petition No. 142/2011(SM)dated 23.08.2011	9,300	13,400
01.01.2015- 31.03.2017	Petition No.06/2014(SM)dated 30.12.2014	3,500	5,800
01.04.2017 onwards	Petition No.02/2017(SM)dated 30.03.2017	1,000	2,400

**Non-Solar REC Floor and Forbearance Prices**

Year	Order	Floor Price (Rs/Mwh)	Forbearance Price (Rs/Mwh)
FY 2010- FY 2012	Petition No.99/2010(SM)dated 01.06.2010	1,500	3,900
FY 2012- FY 2016	Petition No. 142/2011(SM)dated 23.08.2011	1,500	3,300
01.04.2017 onwards	Petition No.02/2017(SM)dated 30.03.2017	1,000	3,000

This downward fluctuation has been on account of drastic reduction in the cost of generation. The pricing of RECs is therefore not static and the

Commission must take into account sectoral realities. Thus, the Appellants cannot claim a vested right to a fixed Floor Price.

- 8.8 The Appellants have attempted to create an impression that the Central Commission has changed the Floor Price and Forbearance Price retrospectively. In this regard, it is clarified that the proviso to the Regulation 9(1) stipulates that the Central Commission may provide from *time to time* the Floor and Forbearance Price. Moreover, it is merely a progressive reflection of the cost of supply of electricity through solar and non-solar sources of renewable energy, as mandated under Section 61(d).
- 8.9 The Appellants cannot claim a vested right to get a specific Floor Price beyond the Control Period which ended on 31.03.2017 in this case mandated under the REC Regulations. The Appellant's contention that just because the Central Commission extended the validity period of the RECs due to large unsold inventory of RECs, they should be permitted to sell at the same fixed Floor Price is untenable. The period of validity of the REC and its price are entirely different concepts and the two cannot be mixed up.
- 8.10 The suggestion to link the validity of the REC with the viability of the project, i.e. to provide for a control period for a total life of the project to enable viability access and financing, the Central Commission rejected the same as far back as in 2010. The same has been brought out in the reply to Appeal No. 95 of 2017 as under:

*“Not envisaged in this order. As per the CERC regulation on REC, the Commission may, in consultation with the Central Agency and Forum of Regulators from time to time provide for the floor price and forbearance price separately for solar and non-solar Certificates.”*

Thus it is too late in the day to seek a linkage between project viability and life of the REC.



**Promissory Estoppel**

8.11 At the outset, it is submitted that the Appellants in the Appeals Nos. 105 and 173 of 2017 have not taken the plea of Promissory Estoppel in their respective appeals. The said Appellants have merely adopted the oral submissions made by the Appellant in Appeal No. 95 of 2017.

8.12 The Appellant in Appeal No. 95 of 2017 has pleaded in Paragraph 7.16 of its appeal that the Central Commission “guaranteed” that a minimum return would be protected by the floor price of the RECs. It is further stated that, therefore, the members of the Appellant Association proceeded to invest into the REC scheme on the basis of the guarantee put forth by the Central Commission in its order dated 01.06.2010. It is submitted that the said Appellant has selectively relied on the Commission’s views as provided in the Appendix to this order. In any event, such clarifications cannot be considered as a representation to invoke the doctrine of Promissory Estoppel. A tariff fixation exercise or use a particular methodology in such an exercise cannot be considered as a representation or a guarantee to attract the said doctrine. As explained above, under the REC Regulations, the provision of Floor Price and Forbearance Price is itself discretionary. There cannot be a plea of Promissory Estoppel against legislation, more so against a provision providing discretionary power.

8.13 There is no averment or pleading in Appeal No. 95 of 2017 to show how the members of the Appellant Association altered their position in view of the so called representation by the Commission. The written representation made by the Appellant to the Central Commission prior to the passing of the impugned order also merely talk about deviation from the usual practice. A change in methodology cannot be considered as a

deviation from an alleged promise or representation. The impugned fixation of the floor and forbearance price is in accord with Regulation 9(2) of the REC Regulations and no argument has been made demonstrating any infraction of this regulation in the fixation of the floor and forbearance price.

8.14 The Appellants have failed to demonstrate that the Central Commission made any specific assurance on the basis of which they have altered their position. Thus, it is submitted that the doctrine of Promissory Estoppel cannot be invoked in the instant case.

8.15 The rule of pleadings in a case where the doctrine of Promissory Estoppel is invoked has been explained by the Hon'ble Supreme Court in *Bannari Amman Sugars Ltd. v. CTO (2005) 1 SCC 625* wherein it has held that:

*"19. In order to invoke the doctrine of promissory estoppel clear, sound and positive foundation must be laid in the petition itself by the party invoking the doctrine and bald expressions without any supporting material to the effect that the doctrine is attracted because the party invoking the doctrine has altered its position relying on the assurance of the Government would not be sufficient to press into aid the doctrine. The courts are bound to consider all aspects including the results sought to be achieved and the public good at large, because while considering the applicability of the doctrine, the courts have to do equity and the fundamental principles of equity must forever be present in the mind of the court."*

8.16 In fact, giving a financial rebate or concession does not attract the doctrine of Promissory Estoppel as such a concession is defeasible right and can be withdrawn in exercise of the very power under which the such concession is given.

- *Shree Sidhali Steels Ltd. v. State of UP & Ors., (2011) 3 SCC 193 at Paras 48-49*
- *Kothari Industrial Corporation Ltd. v. TN Electricity Board and Anr., (2016) 4 SCC 134 at Para 11*



**Vintage Multiplier**

8.17 The Appellants in Appeal No. 95 of 2017 have tried to portray that the Central Commission introduced Vintage Multiplier in case of the solar generating companies by its order dated 30.12.2014 in Petition No.06/2014(SM). However, it is clarified that the said order merely suggests the amendment of the Regulations which was done on the same date. The Central Commission through the Third Amendment to the REC Regulations, which came into effect from 1.1.2015, introduced the Vintage Multiplier in case of the solar generating companies registered under the REC framework prior to 1.1.2015. Sub-Clauses (7) and (8) of Regulation 7 of the REC Regulation provides as under: -

*"7. The Commission shall determine through a separate order, the quantum of Certificate to be issued to the eligible entities being the solar generating companies registered under REC framework prior to 1<sup>st</sup> January, 2015 for one Megawatt hour of electricity generated and injected into the grid or deemed to be injected (in case of self-consumption by eligible CGP) into the grid as per the following formula:*

*Vintage Multiplier = Floor Price of Base Year / Current Year Floor Price*

*Where,*

*i. 'Base Year' means the year 2012-13 being the year in which the floor price was determined for solar REC for a period of five years.*

*8. The vintage multiplier as specified in Clause (7) of this Regulation was made applicable to the solar generating companies registered under REC framework prior 1<sup>st</sup> January, 2015 and shall be applicable for the existing and future solar RECs for the period from 1<sup>st</sup> January, 2015 up to 31<sup>st</sup> March, 2017, after which such projects shall be eligible for one REC for one megawatt hour of electricity generated." (emphasis supplied)*

8.18 The Vintage Multiplier was issued by the Central Commission by way of an amendment by exercising its legislative power. Regulation 7(8) categorically provided that the Vintage Multiplier was applicable till

31.03.2017. The Appellants were well aware of this time frame. They enjoyed the benefits and did not choose to challenge this amendment. Appellants have no right to get the Vintage Multiplier extended after the statutory period provided in the REC Regulations.

8.19 Appellants in Appeal No. 95 of 2017 have strongly relied on the “*Explanatory Memorandum for the Draft Central Electricity Regulatory Commission(Terms and Conditions for recognition and issuance of Renewable Energy Certificate for Renewable Energy Generation) (Third Amendment) Regulations, 2014*” to create an incorrect impression that the Vintage Multiplier was to be provided for a period of 12 years. However, it is clarified that the notified amendment merely provides the Vintage Multiplier till 31.03.2017.

8.20 Appellants have further relied on the National Tariff Policy to argue that the Central Commission is bound to prescribe a vintage based multiplier. However, it is respectfully submitted that such an argument is untenable as the Tariff Policy merely provides that:

*“(iv)...Similarly, considering the change in prices of renewable energy technologies passage of time, the Appropriate Commission may prescribe vintage based REC multiplier”*

8.21 Thus, it is clear that the Central Commission has the discretion to provide a Vintage Multiplier which, depending upon the other factors, may or may not decide to exercise. The Central Commission was of the view in 2014 that such a multiplier was necessary and accordingly, the REC Regulations were amended. However, for the reasons recorded in the Impugned Order, the Central Commission has decided not to continue the Vintage Multiplier.

8.22 The Appellants cannot seek a mandamus in an appeal under Section 111 of this Act to amend the Regulations to extend the applicability of Vintage Multiplier. It is settled law that even the Hon’ble High Courts,



under Article 226, do not have the power to issue a mandate to direct the executive to make a subordinate legislation in a particular manner. (See *State of U.P. v. Mahindra & Mahindra Ltd. (2011) 13 SCC at Para 10*).

**Methodology and Principles of Determination of Floor And Forbearance Price.**

8.23 The Central Commission derives its power to provide for Floor and Forbearance Price from Regulation 9. Regulation 9 provides that the Central Commission shall determine the Floor and Forbearance Price after consultation with the Central Agency and Forum of Regulators and shall be guided, *inter alia*, by the principles provided under Regulation 9(2). None of the Appellants have demonstrated how the Impugned Order violates Regulation 9(2).

8.24 The Central Commission vide its letter dated 06.03.2017, sent through e-mail, sought views, comments and suggestions on the Draft Order from the State Electricity Regulatory Commissions and the Central Agency i.e. National Load Despatch Centre. Comments received from the Central Agency have been duly recorded in the Stakeholders comments in Section II of the Impugned Order. The relevant extract is reproduced below:

***“POSOCO has submitted that revision in REC Forbearance and Floor Price is a much awaited step to increase the redemption of RECs by the buyers.”***

8.25 The Central Commission has provided for the Floor and Forbearance Price in accordance with the principles enshrined under Regulation 9(2), after duly considering the viability of solar projects in 17 States by comparing the average bid tariff with the respective State APPC and Minimum Project Viability requirement (MPVR).

8.26 It is submitted that the issue of deviation from usual practice of calculating the floor and forbearance price was raised by various

stakeholders before the Commission. The Commission adequately dealt with this contention and held that:

*“17. IWPA has commented that the earlier approach of considering tariffs based on CERC RE Tariff Regulations should be used for the sake of uniformity and consistency.*

*The Commission clarifies that the REC Regulations provide for incorporating state level variations, as the developers would compare the total revenue under REC framework vis-à-vis the FIT prevalent in the respective state. Particularly, Regulation 9(2) clause (a) and (b) are as below:*

*“The Commission while determining the floor price and forbearance price, shall be guided inter alia by the following principles:*

- (a) Variation in cost of generation of different renewable energy technologies falling under solar and non - solar category, across States in the country:*
- (b) Variation in the Pooled Cost of Purchase across States in the country;”*

Thus, the methodology used by the Commission is in consonance with Regulation 9 of the REC Regulations.

8.27 The Appellants have not brought to notice of this Hon'ble Tribunal that the Central Commission has done away with the practice of issuing generic tariff for solar and wind for FY 2017-18 and onward. Thus, the earlier practice of using Commission notified tariff as reference price for the determination of floor and forbearance price of REC is of no relevance now. This is the reason for the change in methodology. The Central Commission in the Impugned Order has considered the data on solar prices discovered through auctions, unlike in the past when the solar energy sector was in infancy and no such data was available.

8.28 The contention that floor price is a component of tariff is also misleading. It is submitted that REC projects generally have the two sources of revenue viz., (i) from sale of electricity component and (ii) from the sale



of REC. However, both these revenue sources flow from "market determined price" and not from the "cost based regulated tariff" of the output/product they sell. In other words, for neither of these revenue sources, tariffs are determined by the regulator. The project developers depend on market forces for both.

- 8.29 Pertinently, cost recovery is guaranteed by the regulator only in cases of project specific tariff determination, wherein detailed cost analysis is undertaken by the regulator in respect of each such project. REC's is not a project specific tariff determination mechanism. It is a market based instrument and the investors choose the scheme with due knowledge of the risks and rewards associated with the scheme. The CERC determines floor and forbearance prices based on the market realities and with due regard to the need for balancing the interests of consumers and investors. Such prices are generic in nature and cannot be expected to address the special circumstances of every project.
- 8.30 The argument regarding the difference in the project size of the solar projects diminishing the economies of scale is misleading. The Central Commission has duly examined the viability of solar projects in 17 States, by comparing the average bid tariff with the respective State APPC. Majority of the States enlisted do not need any floor price support, as Minimum Project Viability requirement (MPVR) is negative in those States. Thus, with a floor price of Rs.1/unit, smaller projects with tariff greater than the large projects are still viable in these States. All the members of the Appellant Association in Appeal No. 95/2017 have projects registered in Madhya Pradesh. For Madhya Pradesh, the floor price based on MPVR is determined as Rs.0.44/unit. Hence, there is sufficient buffer to account for large scale efficiencies.
- 8.31 The Central Commission is responsible for balancing the interests of the

consumers and the interests of generators. The Central Commission cannot keep the prices of RECs artificially high and burden the consumers with high costs of electricity. Moreover, if the prices of the RECs are kept artificially high without aligning them with the market reality and current cost of electricity, the obligated entities will not purchase the RECs and try to fulfil their RPO by other means. This defeats the mandate of Central Commission under Section 61 and Section 66.

8.32 The Appellants have argued that the obligated entities have not fulfilled their Renewable Purchase Obligations. The Central Commission is not liable for compliance of these obligations by State Commissions and Obligated Entities. The demand for renewable energy including that for RECs gets generated through RPO which is squarely in the realm of the State Commissions. Even then the Central Commission has always played a pro-active role and has been persuading the State Commissions through Forum of Regulators (FoR) at regular intervals to enforce RPO compliance.

8.33 The Central Commission has, thus, passed the Impugned Order in accordance with the Act, REC Regulations and the National Tariff Policy. Thus, these appeals are liable to be dismissed by this Hon'ble Tribunal.

**9. The key provisions under Statutory Framework for Promotion of Renewable Energy Sources are being brought out as under for reference:**

9.1 The Electricity Act, 2003 provides that the co-generation and generation of Electricity from non-conventional sources to be promoted by the SERCs by providing suitable measures for connectivity with grid and sale of electricity to any person and also by specifying for purchase of electricity from such sources, a percentage of the total consumption of



electricity in the area of a distribution licensee. The provisions under Section 61 & 86(1)(e) of the Act are important in this regard which inter-alia stipulate that the State Commissions while specifying the terms and conditions for determination of tariff shall be guided by promotion of co-generation and generation of electricity from renewable sources of energy.

- 9.2 The National Electricity Policy issued by the Central Government under Section 3 of the Act provides that the State Commission shall specify for purchase of Electricity from non-conventional sources of energy a percentage of the total consumption of electricity in the area of distribution licensee. The share of electricity for non-conventional sources needs to be increased as prescribed by the State Commission. It further provides that it will take some time before non-conventional technology to compete, in terms of cost, with conventional sources, the Commission may determine an appropriate differential tariff to promote these technologies.
- 9.3 The National Tariff Policy notified by the Central Govt. among others, stipulates that the Appropriate Commission shall fix minimum percentage for purchase of energy from non-conventional sources taking into account the availability of such sources in the region and its impact of retail supply tariff.
- 9.4 The National Action Plan on Climate Change also lays emphasis on development of renewable energy sources and recommends that in order to accelerate the large scale development of renewable energy a dynamic renewable purchase obligation at national level has to be targeted with annual percentage increase in a trajectory so as to reach around 15 percentage RPO target by 2020 at national level.
- 9.5 The various provisions under the statutory framework/guidelines, mandate that the State Commission shall fix the RPO taking into account

the availability of such sources in the regions and its impact on retail supply tariff. However, within the RPO, the State Commission shall also reserve a minimum percentage of purchase from the solar energy which will go up gradually and achieve trajectory formula set by the Central Government in a time bound manner.

- 9.6 Generally, it is desirable to have purchase of energy from renewable resources more or less in same proportion in different states. However, as the renewable resources are concentrated in some states compared to others on account of geographical and/or other topographical factors, the distribution licensees in states having deficient renewable energy resources would be unable to fulfil their RPO as mandated by SERC. Keeping this in view, an appropriate mechanism is required to be evolved so as to attain equitable RPO in all the States throughout the country. The Central Commission, with a view to alleviate the difficulties, notified the Central Electricity Regulatory Commission (terms & conditions for recognition and issuance of Renewable Energy Certificate for Renewable Energy Generation) Regulations, 2010 dated 14.01.2010. These regulations have been brought out by the Central Commission in exercise of its powers conferred under sub-section 1(1) of Section 178 & Section 66 read with Clause (y) of sub-section 2 of Section 178 of the Act for the development of market in power from non-conventional energy sources by issuance of transferable and saleable credit certificates.
- 9.7 Through such mechanism, the renewable energy generators can sell electricity to the local distribution licensee at the rate of conventional energy and recover the balance cost by selling the renewable energy certificates (RECs) to other distribution licensees/obligated entities in order to meet their RPO. REC is issued only to RE generators for generation of renewable energy and as an alternative mode provided to the RE generators for recovery of their costs. One REC is issued for 1



MWH of energy from renewable energy sources injected into the grid or consumed by a captive consumer. REC can be purchased by the obligated entities to meet their RPO under Section 86(1)(e) of the Act and purchase of REC would be deemed a purchase of renewable energy for RPO compliance.

- 9.8 REC is an alternative to physical procurement of renewable energy. The distribution licensees as well as other persons consuming electricity generated from conventional captive generating plant or procuring electricity from conventional generating stations through open access and third party sale or obligated entities who have to meet their RPO. These obligated entities have option to meet their RPO mandated under Section 86 (1)(e) of the Act and the Regulations either by directly procuring energy from renewable sources of energy in physical form or purchasing REC, as deemed procurement of renewable energy. Both have to be considered for fulfilling the RPO specified under Section 86(1)(e). An obligated entity has option to fulfil its RPO either by fully procuring renewable energy in physical form or fully by purchasing REC or partly in physical form and partly REC. However, the option has to be exercised based on sound economic principles. In case of distribution licensees, the State Commission while approving compliance of RPO has to consider that the distribution licensee has exercised its option prudently.
- 9.9 In terms of various provisions of the Act and policies framed there under, the Forum of Regulators (FOR), a statutory body formed under section 166(2) of the Electricity Act, 2003 prepared a detailed report on promotion of renewable energy sources, which, inter alia provides for renewable energy certificate mechanism to enable states to meet their obligations while encouraging generators to set up generation facilities based renewable resources in the most optimal locations.

**10. CERC Regulations for promotion of Renewable Energy Generation:**

- 10.1 The Commission had notified the CERC (Terms and Conditions for recognition and issuance of Renewable Energy Certificate for Renewable Energy Generation) Regulations, 2010 (hereinafter Principal REC Regulations) vide notification dated 14<sup>th</sup> January, 2010. As mentioned in the Statement of Reasons issued along with the regulations, the concept of renewable energy certificate seeks to address the mismatch between availability of renewable energy sources and the requirement of obligated entities to meet their renewable purchase obligations. The Commission had further clarified that the REC mechanism aimed at promoting investment in the renewable energy projects and to provide an alternative mode to the RE generators for recovery of their costs.
- 10.2 Subsequently, the Commission made two amendments in the Regulations (notifications dated 1.10.2010 and 11.07.2013) to provide clarity on applicability of the regulations to eligible entities and bring in certain essential checks and balances in the REC related processes. The third Amendment to Regulations was notified by the Commission on 01.01.2015.
- 10.3 The Commission also approved the procedures for accreditation, registration issuance and redemption of RECs. Further, the Commission approved the rules/ bye laws and mechanism for REC price discovery on power exchanges. The Forum of Regulators (FOR) approved the Model Regulations on Renewable Purchase Obligations, its compliance and Implementation of REC Framework for the State Electricity Regulatory Commissions (SERCs).
- 10.4 The REC trading on the power exchanges started during the month of March, 2011. Ever since, the non-solar REC and solar REC trading sessions have been taking place regularly.



- 10.5 The volume of RECs available in the market has been increasing over the time whereas the demand for RECs has been comparably low. This has resulted in REC trading at low profile and piling up of unsold inventory of RECs in the market. The setting up of RPO targets and its enforcement is perceived to be weak thereby leading to non-compliance by the obligated entities in meeting their annual RPO targets. This has been acknowledged by the Central Commission at various occasions that there is a fundamental challenge in not just implementing the REC mechanism but also the RPO compliances and development of renewable energy in the country. In order to improve the efficacy of the REC framework, it has been felt by the Commission that certain features of the REC mechanism such as enabling framework for eligibility of distribution licensees for REC, long term feasibility of floor and forbearance prices, validity of REC issued, frequently of trading sessions, has been reviewed in order to accelerate the RE capacity addition.
- 10.6 As per the CERC REC Regulations, the eligible RE generators mainly fall under three categories:
- i) RE generator selling electricity to a distribution utility at Average Pool Purchase Cost determined by the respective SERCs (can be termed as APPC route);
  - ii) Captive Generation Plant for meeting captive electricity requirement (CGP route);
  - iii) RE generator selling electricity to an open access consumer (OA route).

As per information collated by FOR from various states in the past, it has been found that among the three routes available for renewable energy generators, the REC capacity is presently dominated by RE generators operating under CGP or OA route. One of the key reasons attributed to the dominance of the CGP & OA route in REC market can be related to the different level of pricing framework for electricity component under

the above three routes. Under the APPC route, the RE generator is eligible only for APPC price determined by respective SERC which is reported to be lower than the electricity reference price levels under CGP or OA route. This issue of higher realisation by sale/consumption of electricity under OA/CGP route has been raised by different State Commissions / stakeholders from time to time.

11. **We have heard the learned counsel appearing for the Appellants and the learned counsel appearing for the Respondent Commission and gone through carefully their stand in the written submissions and after thorough evaluation of the relevant material on records, the following common issues emerge in the Appeals for our consideration:**

- (i) Whether the impugned order has been passed in contravention of the existing statutes, law, policy, regulations, etc., relating to RE generation/RECs
- (ii) Whether change in methodology for determining the floor & forbearance prices, discontinuation of vintage multipliers, etc. is reasonably justified?
- (iii) Whether the huge inventory of unsold RECs and RPO compliance by obligated entities have been taken into account by CERC?
- (iv) Whether a specific REC price, financial security, etc. can be claimed as vested rights?

As the issues arising out of the three Appeals are common, we will decide them in this common judgment.

12. **Our Findings & Analysis :**

**Issue No.1:-**

- 12.1 The Appellant(s) have contended that the CERC at the time of introduction of RECs' through a regulatory intervention provided both the floor and forbearance prices. These regulatory interventions/orders were issued in the exercise of jurisdiction vested in the Central Commission under proviso to Regulation 9(1) & 9(2). At each stage of



the orders, CERC represented to the appellate generators that they will recover the floor price, should they decide to set up RE generating stations and participate in the REC scheme? The Appellants have further submitted that : had the Central Commission not fixed the floor price, the Appellant generators could not have participated in the REC scheme. The members of the Appellants' Association have further submitted that the Central Commission has completely failed to appreciate that neither the Electricity Act, 2003 nor its own regulation empowered it in any manner to give retrospective effect in application to REC pricing order and change dispensation for all existing RECs under a broad sweep. The appellants have cited the Section 61(h) of the Act which mandates that while fixing the tariff, promotion of renewable energy must be kept into account. In fact, the obligated entities have failed to fulfil their respective RPO and the Central Commission has failed to appreciate the same. They have claimed that the liability crystallised on the obligated entities cannot be done away by using the impugned order as that would then defeat the entire objective of introducing the RPO/REC mechanism. In view of the statements made by the Appellants, they allege that the impugned order dated 30.3.2017 is contrary to the Electricity Act, National Electricity Policy, National Tariff Policy as well as the REC Regulations and ought to be set aside by the Tribunal.

- 12.2 *Per contra*, the Central Commission has submitted that it derives its power to provide for floor and forbearance price from Regulation 9 which stipulates that the Central Commission shall determine the floor and forbearance price after consultation with the Central agency and Forum of Regulators and shall be guided, inter-alia, by principles provided under Regulation 9(2). The Central Commission has further brought out that before passing the impugned order, it had sought views,

comments, suggestions etc. on the draft order from all stakeholders including State Commissions, Central Agency NLDC etc. The comments received from the Central Agency have been duly recorded in the stakeholder's comments in Section II of the Impugned Order. The relevant extract of Central Agency (POSOCO) is as “ *POSOCO submitted that revision in REC Forbearance and Floor Price is a much awaited step to increase the redemption of RECs by the buyers.*” The Central Commission has reiterated that it has passed the impugned order in accordance with the Electricity Act, National Electricity Policy, National Tariff Policy, REC Regulations etc. and as such, the question of any contravention of the existing statutory frameworks does not arise. Moreover, none of the appellants had demonstrated how the impugned order violates the statutory framework including REC Regulation 9(2).

**Our Findings:**

- 12.3 We have gone through the written submissions of the Appellants as well as the Central Commission and analysed the same with respect to the provisions of the statutory framework namely the Electricity Act, National Electricity Policy, National Tariff Policy, REC Regulations, etc.. We have noted the deliberations and analysis brought out in the impugned order dated 30.03.2017 and found that the impugned order has been passed adhering to the REC Regulations and in a transparent manner. The Central Commission has invited views and suggestions from all stakeholders and duly analysed the same before arriving at the concluding remarks. The REC Regulations have been notified by the Central Commission in exercise of its powers under Section 66 read with Section 178(2) (y) of the Electricity Act, 2003 and the operating regulation provides as under:-

*“9. Pricing of Certificate*



*(1) The Price of Certificate shall be as discovered in the Power Exchange:*

*Provided that the Commission may, in consultation with the Central Agency and Forum of Regulators from time to time provide for the floor price and forbearance price separately for solar and non-solar Certificates”.*

- 12.4 It would be evident from the above provisions under the regulations that the price of RE certificates is market driven and dynamic in nature. The fixation of floor and forbearance prices for solar as well as non-solar RE have to be provided by the Central Commission from time to time in consultation with POSOCO, the Central Agency and also viewing into market realities at the power exchange. As mentioned in the statement of reasons issued along with the regulations, the concept of REC seeks to address the mismatch between availability of RE sources and the requirement of obligated entities to meet their RPO. It has been clarified by the Central Commission that the REC mechanism is basically aimed at promoting the development of renewable energy sources and to provide an alternative mode to the RE generators for recovery of their project costs through brown & green components. **In view of these facts, we observe that the Central Commission has passed the impugned order in accordance with various statutory framework such as the Act, Electricity / Tariff Policies, REC Regulations, etc. and does not cause to show any violation thereof.**

**Issue No.2:-**

- 12.5 The Appellants have alleged that the CERC in the impugned order had deviated from its usual practice of calculating the floor and forbearance prices by taking into account, CERC benchmark capital cost. This practice has been continued by CERC for several years. However, the Central Commission for the first time has used bid discovered tariff in all

states and UTs' in India. The Appellants have submitted that the Commission has not provided any cogent reasoning for such a departure and ignored its own tariff orders which have been passed for determination of solar PV and solar thermal plants. The Appellants have contended that such discovery of tariff has been based on large scale and ultra mega solar power projects which have been introduced by MNRE to provide a huge impetus to solar energy generation and triggering economies of scales for cost reductions, technical improvements etc.. The Appellants have further submitted that the average bid tariff used by CERC coming from large scale solar plants is not reflective of the cost of generation of different renewable energy technologies and smaller RE projects ranging up to 2 MW. The Appellants have pointed out that the Central Commission vide its order dated 29.4.2016 in Petition No.SM/03/2016 determined the tariff for various RE technologies. The tariff so determined was applicable up to 31.03.2017 and, therefore, the same would have continued to apply for the determination of REC price. This approach would have been consistent with the Central Commission's REC Regulations. The Appellants have further claimed a vested right in the specific floor price as well as the Vintage Multiplier. They have alleged that the vested interest of the Appellants cannot be taken away and by doing so would be contrary to established principle of promissory estoppels. Reliance has been placed on some of the judgments of Hon'ble Supreme Court to support their contention, as stated supra.

- 12.6 **Per contra**, the Central Commission has submitted that a tariff fixation exercise or use of particular methodology in such an exercise cannot be considered as a representation or a guarantee to attract the Doctrine of Promissory Estoppel. It has been clarified from time to time that under the REC Regulations, the provision of floor price and forbearance price is discretionary in nature. As such, there cannot be a plea of Promissory



Estoppel against the legislation more so against a provision providing discretionary power. A change in methodology cannot be considered as a deviation from an alleged promise or representation. The fixation of the floor and forbearance price is in accordance with Regulation 9(2) of the REC Regulations and no argument has been made administering any infraction of this Regulation in the fixation of floor and forbearance prices. Further, the Appellants have failed to demonstrate that the Central Commission made any specific assurance on the basis of which they have altered their position. The Central Commission have cited various judgments of the Hon'ble Supreme Court wherein the rule of pleadings invoking the Doctrine of Promissory Estoppel has been explained. Thus, the Central Commission has categorically indicated that the Doctrine of Promissory Estoppel cannot be invoked in the instant case.

- 12.7 The Central Commission has further brought out that the Appellants in the Appeal No.95 of 2017 have tried to portray that the Commission introduced vintage multiplier in case of the solar generating companies by its order dated 30.12.2014 in Petition NO.06/2014 (SM). However, the said order merely suggests the amendment of regulations which was done on the same date. The Central Commission through the third amendment to the REC Regulations which came into effect from 1.1.2015 introduced the vintage multiplier in case of the solar generating companies registered under the REC framework prior to 1.1.2015. The vintage multiplier as specified in the Clause 7 of the Regulation was stipulated to be applicable for the existing and future solar RECs for the period from 01.01.2015 upto 31.03.2017. The Central Commission has further submitted that the vintage multiplier was specified by way of an amendment by exercising its legislative power. The Appellants were well aware of timeframe and they enjoyed the benefits and did not choose to challenge this amendment. Now, the Appellants have no right to get the vintage



multiplier extended after the expiry of statutory period provided in the REC Regulations. The Appellants in Appeal No.95 of 2017 have strongly relied on the explanatory memorandum for the draft REC Regulations, 2014 to create an incorrect impression that the vintage multiplier was to be provided for a period of 12 years. However, the notified amendment (3<sup>rd</sup> Amendment) merely provides the same till 31.3.2017. The Central Commission has further contended that it has the discretion to provide the vintage multiplier considering many other factors and also, may not decide to provide for the same. The Central Commission was of the view in 2014 that such a multiplier was necessary and accordingly, REC Regulations were amended. However, for the reasons recorded in the impugned order. The Central Commission has now decided not to continue the vintage multiplier.

- 12.8 The Central Commission has reiterated that the Appellants cannot seek a *mandamus* in an Appeal under Section 111 of the Electricity Act, 2003 to amend the REC Regulations to extend the viability of vintage multiplier. The Commission has further cited that it is a settled law that even the Hon'ble High Courts under Article 226 do not have the power to issue a mandate to direct the executive authority to make a subordinate legislation in a particular manner. (*State of U.P. vs. Mahindra & Mahindra Ltd. (2011) 13 SCC*) The Central Commission has further indicated that it has provided for the floor and forbearance prices in accordance with principles enshrined under Regulation 9(2) after duly considering the viability of solar projects in 17 states by comparing the average bid tariff with the respective State APPC and Minimum Project Viability Requirement (MPVR). It is further submitted by the Commission that the issue of deviation from usual practice of calculating the floor and forbearance price was raised by various stakeholders before the Commission and the same were adequately dealt with as recorded



under Para 17 of the impugned order. It is further brought out by the Commission that it has done away with a practice of issuing generic tariff for solar and wind power for Financial Year 2017-18 and onwards. Thus, the earlier practice of using Commission notified tariff as a reference price for determination of floor and forbearance price of REC is of no relevance now. This is a reason for changing the methodology. The Commission has also added that it has considered the data on solar prices discovered through auctions/bids unlike in the past when the solar energy sector was in infancy and no such data was available.

**Our Findings:**

12.9 The Appellants have repeatedly emphasised that the Central Commission in impugned order has deviated from its usual practice of calculating the floor and forbearance prices considering its own benchmark capital cost without assigning any cogent reasoning. It has used bid discovered tariff in specifying the floor price of RECs. The Central Commission has clarified that a tariff fixation exercise or use of a particular methodology in such an exercise cannot be considered as a representation or a guarantee. In fact the provision in the REC Regulations for specifying floor and forbearance price is discretionary in nature and any change in methodology cannot be termed as a deviation from an alleged promise or representation. Further, the Vintage Multiplier in case of solar was introduced by the Central Commission through its third amendment to the Regulations and was valid up to 31.03.2017. The Appellants were well aware of the timeframe and did not choose to challenge the amendment and now after completion of the statutory period provided in the REC Regulations are claiming vested right. Going through various material placed before us, it is relevant to note that the Central Commission has done away with a practice of issuing the generic tariff for RE projects

from 2017-18 onwards and accordingly the earlier practice of using Commission notified tariff as a reference price for determination of floor and forbearance price of REC is of no relevance now. **In view of the growing competition and induction of latest technologies, more and more generators are participating in the auctions/bids with considerable reduced cost of generation. Thus, the Central Commission in specifying REC prices, has shifted to bid discovered prices in place of earlier generic tariff fixed by it when the RE sector specially solar was in infancy stage. Similar is the case of Vintage Multiplier which was specified based on its necessity under the discretionary powers of the Central Commission. The Central Commission has adequately dealt with these matters in the impugned order with cogent reasoning and we do not find any infirmity or otherwise, unjustness in specifying the floor and forbearance prices of REC and discontinuation of the Vintage Multiplier.**

**Issue No.3:-**

12.10 The Appellants have further submitted that the Impugned Order benefits the defaulter as it gives incentive to a defaulting Obligated Entity who, in violation of mandatory regulations, is not buying RECs, at the price on which they were generated. Further, such defaulter can now buy RECs at a much lower price, at the cost of generators who have not recovered the cost of generation. The Appellants have pointed out that the Central Commission itself has admitted that since the generators had not recovered the cost of generation on account of inability to sell the RECs, extensions of the validity period of the RECs were given from time to time. The Appellants have alleged that the Central Commission has failed to analyse the end recovery of the cost for sale of electricity on account of stranded REC inventory. The Central Commission has, thus,



taken a stand in complete departure from its earlier stand / representation made to investors of RE projects. The Appellants have submitted that the Central Commission has now moved from the viability principles adapted by it to a principle allegedly linked to market/ground realities.

12.11 The Appellants have contended that the failure of Regulations to enforce compliance of RPO is now envisaged to be borne by RE generators for no fault of theirs. It has been pointed out by the Appellants that the benefit of price reduction is being given to the obligated entities who have repeatedly failed to follow the requirement of law to fulfil their RPO obligations. In fact, the Central Commission has acknowledged in the impugned order that there has been lack of RPO enforcement but took decisions otherwise. The Appellants have stated that the Central Commission arbitrarily discontinued the practice of using technology specific tariff as it was adopted under its previous orders for the purpose of determining the REC prices.

12.12 **Per Contra**, the learned counsel appearing for Central Commission, while being in agreement with the Appellants that the obligated entities have not fulfilled their RPOs, clarified that it is not liable for compliance of the obligations by State Commissions/obligated entities. The demand of renewable energy including that of RECs get generated through RPO compliances which is squarely in the realm of the State Commissions. The Central Commission has always played a pro-active role and has been persuading the State Commissions through Forum of Regulators (FoR) at regular intervals to enforce RPO compliance. It has further been submitted that the Central Commission is responsible for balancing the interest of consumers as well as the RE generators. The Central Commission cannot keep the prices of RECs artificially high and burden the consumers with high cost of electricity. It has further been contended

by the Commission that if the prices of RECs are kept artificially high without aligning them with the market reality and current cost of electricity, the obligated entities will not purchase the RECs and try to fulfil their RPOs by other means. This, in turn, defeats the mandate of Central Commission under Section 61 & Section 66 of the Electricity Act, 2003. The Central Commission is well aware of unsold inventory of RECs, market trend, cost of various RE technologies, etc. and has considered all these factors in the impugned order appropriately and made efforts to strike a balance between interest of the consumers as well as of RE generators.

**Our Findings:**

12.13 The Appellants have contended that the impugned order benefits the defaulters who in violation of mandatory regulations are not buying RECs to meet their RPO. As of now, the defaulting obligated entities can buy RECs at a much lower prices at the cost of RE generators who have not recovered their cost of generation. The Appellants have further submitted that the Central Commission has failed to analyse the end recovery of the cost for sale of electricity on account of stranded REC inventory. On the other hand, the Central Commission has acknowledged that the obligated entities are not fulfilling their RPOs strictly as per the Regulations but it is in no way responsible for such non-compliance as the matter lies in the jurisdiction of the State Commissions. In fact, CERC is responsible for balancing the interest of consumers on one hand and the RE generators on the other. Besides, the Central Commission is playing a proactive role and persuading the State Commissions through FOR, at regular intervals, to enforce RPO compliances. **We have carefully considered the contentions of all the parties and noted that under the prevailing market scenario, the prices of RECs cannot be kept artificially high to burden the end consumers. Further, if the**



prices of RECs are kept high without aligning them with the market reality and current cost of electricity, the obligated entities may not purchase the RECs and try to fulfil their RPOs by other means. It is also noteworthy that sufficient time has been given to RE generators to sell their RECs at the power exchange but perhaps in anticipation of selling them at better prices has resulted into unsold REC inventory.

**Issue No.4:-**

12.14 The Appellants have submitted that the impugned order has resulted into an adverse blow to the REC industries. The members of the Appellant Associations' are facing erosion of 70% of their network while some members are on the verge of being declared APA due to drastic reduction in REC prices. The Appellants have further submitted that the large number of pending RECs is not just a result of non-compliance by the obligated entities but also due to inaction of SERCs. For instance, SERCs' have allowed waiver as well as carry forward of the shortfall in RPO compliance by the obligated entities even though RECs were available in the market. It has been brought out by the Appellant that the REC market is already struggling to stay afloat and such decisions by CERC will cumulatively obliterate the demand for RECs. In a nutshell, the RE developers who have opted for REC mechanism and in turn subsidised their power cost in the hope of recovering their cost through sale of REC will not be able to recover the costs. The Appellants have alleged that by passing the impugned order, the Central Commission has affected the vested rights of the generators. It has further been submitted by the Appellants that RE component was attributed a certain value on the date of sale of electricity and they have, therefore, a vested right to

recover for the floor price. The impugned order has, thus, a retrospective effect or which it wrong and required to be set aside.

12.15 The Appellants have pointed out that the Central Commission itself admitted that since the generators had not recovered the cost of generation on account of inability to sell the RECs, extension of validity period of the RECs were given from time to time. The Appellants have indicated that the right to recover tariff is a right protected under the Statute. Once the regulator recommends for tariff has not been recovered, he has a duty thereafter to ensure recovery of tariff from those projects who have participated in the REC scheme. The Appellants have also stated that the Central Commission has wrongly held that if a multiplier is provided, there would be sudden surge in the stock of the REC on the account and it may apply the existing inventory facing even greater difficulty in getting cleared.

12.16 **Per Contra**, the Central Commission has submitted that it is required to take a holistic view of the market and balance the interest of the stakeholders. In fact, REC is not issued with a fixed price on it, rather it is issued to an eligible entity on the basis of units of electricity generated/consumed from a RE source. The pricing is a market based instrument and governed by the cost, demand and supply of the electricity generated from RES. It would be evident on comparison of REC prices over the years since the inception of REC framework that there has been a consistent downward trend in the REC prices for both solar as well as non-solar. The pricing of RECs is, therefore, non-static and the Central Commission must take into account sector realities. Thus, the Appellants cannot claim a vested right to a fixed floor price. While referring to REC Regulations, it is clear that the Central Commission may provide from time to time the floor and forbearance price taking into account a progressive reflection of the cost of supply of electricity through solar



and non-solar sources of renewable energy. As such, the Appellants cannot claim vested right to get a specific floor price beyond the specified control period which ended on 31.03.2017. It has also been added by the Central Commission that suggestions to link the validity of RECs with the viability of the project i.e. to provide for control period for a total life of the projects to enable viability access of the project was rejected by the Commission as far back as in 2010. It is also submitted by the Central Commission that it has duly examined the viability of solar projects in 17 states by comparing the average bid tariff with the respective states APPC and it has emerged that majority of the States enlisted do not need any floor price support, as Minimum Project Viability Requirement (MVPR) is negative in those States. For example, Madhya Pradesh, the floor price based on MVPR is determined at Rs.0.44/unit and hence, there is sufficient buffer to account for large scale efficiencies.

**Our Findings:**

12.17 The Appellants have contended that the impugned order passed by the Central Commission is a serious blow to the RE generators and many of them may be on the verge of being declared NPA due to drastic reduction in REC prices. The impugned order has affected the vested rights of the generators and squarely falls under the Doctrine of Promissory Estoppel. They have further submitted that the right to recover tariff for supplied electricity is a right protected under the Statute, once the regulator admits for tariff having not been recovered. It is thus duty of the Regulator to ensure the recovery of tariff for the projects who have participated in the REC scheme. The Central Commission has clarified that it is required to take a holistic view of the market and strike a balance between the interests of various stakeholders. The REC pricing is a market driven instrument and governed by cost, demand and supply of electricity

generated from various RE sources. In fact, with this rationale only, the REC prices have undergone a consistent downward trend since the inception of REC framework. Accordingly, the pricing of RECs being dynamic in nature and aligned with sectoral realities cannot be claimed by the Appellants as a matter of vested right to have a fixed floor price. We have gone through the facts and figures presented by the Appellants and the Respondent Commission and note that majority of States in the country do not need any floor price support as Minimum Project Viability Requirement is negative in those states. For instance, the State of Madhya Pradesh, the floor price based on MPVR is determined as Rs. 0.44/unit which has sufficient buffer as compared to the floor price of Rs.1.00/unit specified by the Central Commission. Another important fact is that among the three routes available for RE generators, the REC capacity is dominated by RE generators operating under CGP and OA route rendering APPC route as the last choice. It may be due to the fact that under the APPC route, the RE generator gets lower tariff than the reference price level under CGP & OA route. This issue of higher realisation of revenue by RE generators by sale/consumption of electricity under OA/CGP route has been raised by different State commissions/stakeholders from time to time. Keeping all these facts in view, we are of the opinion that REC prices being non-static and market driven cannot be claimed as a matter of vested rights by RE generators.

**Summary of our findings:-**

12.18 After due consideration of oral and documentary evidence available in the file and after careful perusal of the impugned order passed by the Central Commission, we do not find any error or illegality nor the Appellants



have made out any case to interfere in the well considered impugned order passed by the Central Commission. It is undoubtedly clear that the generation from RE sources, in its all forms, being environment friendly, is required to be promoted to their fullest potential. The Government has accordingly provided enabling environment for development of RE sources so as to achieve the national commitment for achieving desired percent generation from non-fossil fuels by 2030. The statutory framework created by the Govt. from time to time including the Electricity Act, Electricity Policy, Tariff Policy etc. lays emphasis on the promotion of RE generation. With this background, Renewable Projects Obligation (RPO) has been prescribed to be complied with by all obligated entities in a time bound manner with reference to its growth trajectory in the future. CERC as facilitator has brought out REC Regulations from time to time stipulating the prices of REC i.e. floor and forbearance price. In earlier years of its regulations, the Central Commission used to determine the REC prices based on its own benchmark capital cost but with the growing competition and induction of efficient & cheaper technology, it has now switched over to the method of specifying REC prices based on the prices discovered from bids and / or auctions. The earlier REC prices used to be higher due to higher generic tariff and higher benchmark capital cost of RE projects. Now, the bid discovered prices of RE generation are lower because of more and more competition. The lower REC prices now stipulated to be applicable from 01.04.2017 is the case for which the RE generators are agitated. The various issues related with the RE generation such as stranded REC inventory, recovery of cost, RPO compliances, market realities, etc. have duly been analysed by the Central Commission in the impugned order with the rationale thereof. It is also relevant to mention that the RE generators have flexibility to sale their power through all the three routes

available i.e. OA/CGP/APPC. Keeping all the facts associated with the case in view, we are of the firm opinion that the impugned order passed by the Central Commission does not suffer from any legal infirmity or ambiguity.

**ORDER**

In view of the above, we are of the considered opinion that issues raised in the present Appeals bearing Nos. 95 of 2017, 105 of 2017 & 173 of 2017 are devoid of merit. Hence, these appeals are dismissed.

No order as to cost.

Pronounced in the Open Court on this **12<sup>th</sup> day of April, 2018.**

**(S.D. Dubey)**  
**Technical Member**

**(Justice N.K. Patil)**  
**Judicial Member**

**REPORTABLE / ~~NON-REPORTABLE~~**

pr





Annexure O  
केन्द्रीय विद्युत विनियामक आयोग  
CENTRAL ELECTRICITY REGULATORY COMMISSION



Petition No.2/SM/2017

Dated: 23<sup>rd</sup> April, 2018

Shri S.N. Goel  
Managing Director and Chief Executive Officer  
Indian Energy Exchange Limited 4<sup>th</sup> Floor, Plot No. 7  
TDI Centre, Distt. Centre, Jasola,  
New Delhi-110025

Sub.: APTEL Order dated 12.04.18 in the matter of Appeal Nos. 95 of 2017, 105 of 2017 and 173 of 2017

Sir,

This has reference to this Office letters dated 20.07.2017 and 23.08.2017 (copy enclosed), under which IEX was advised to resume the trading session for Non-Solar REC in view of the Hon'ble Supreme Court's Order dated 14.7.2017 in Civil Appeal Nos. 6083/2017. The trading of Solar RECs remained suspended.

2. In view of the Hon'ble APTEL's Order dated 12.04.2018 in above mentioned Appeals read with the Hon'ble Supreme Court Orders dated 20.9.2017 in I.A. No. 82970 of 2017 in Civil Appeal No. 6334 of 2017 and Order dated 14.7.2017 in Civil Appeal No. 6083 of 2017 with I.A. Nos. 42490 and 42496 of 2017, the Commission has decided as under:-

(a) Trading of RECs (Solar and Non-Solar) shall be carried out henceforth in accordance with the Commission's Order dated 30.03.2017 in Petition No. 2/SM/2017.

(b) Deposit of the differential amount of Rs.500/- per REC with the Commission shall be discontinued.

3. Accordingly, this office letters dated 20.07.2017 and 23.08.2017 stands superseded by this letter.

4. This issues with the approval of the Commission.

Yours faithfully,

(T. Rout)  
Chief (Legal)

Copy to:

Shri K.V.S. Baba  
Chief Executive Officer (CEO)  
Power System Operation Corporation Limited  
B-9, Qutab Institutional Area, Katwaria Sarai  
New Delhi-110016

तीसरी मंजिल, चन्द्रलोक बिल्डिंग, 36, जनपथ, नई दिल्ली-110 001  
Third Floor, Chanderlok Building, 36, Janpath, New Delhi-110 001  
Phone : 91-11-2335 3503 Fax : 91-11-2375 3923 E-mail : info@cercind.gov.in





सत्यमेव जयते

केन्द्रीय विद्युत विनियामक आयोग  
CENTRAL ELECTRICITY REGULATORY COMMISSION



340

के वि सि आयोग  
CERC

Dated: 23rd April, 2018

Petition No.2/SM/2017

The Managing Director  
Power Exchange India Limited  
5<sup>th</sup> Floor, Tower-3, Equinox Business Park (Peninsula Techno Park)  
Off. Bandra Kurla Complex  
Kurla (West) LBS Marg  
Mumbai-400070, Maharashtra

**Sub.:** APTEL Order dated 12.4.18 in the matter of Appeal Nos. 95 of 2017, 105 of 2017 and 173 of 2017

Sir,

This has reference to this Office letters dated 20.07.2017 and 23.08.2017 (copy enclosed), under which PXIL was advised to resume the trading session for Non-Solar REC in view of the Hon'ble Supreme Court's Order dated 14.7.2017 in Civil Appeal Nos. 6083/2017. The trading of Solar RECs remained suspended.

2. In view of the Hon'ble APTEL's Order dated 12.04.2018 in above mentioned Appeals read with the Hon'ble Supreme Court Orders dated 20.9.2017 in I.A. No. 82970 of 2017 in Civil Appeal No. 6334 of 2017 and Order dated 14.7.2017 in Civil Appeal No. 6083 of 2017 with I.A. Nos. 42490 and 42496 of 2017, the Commission has decided as under:-

(a) Trading of RECs (Solar and Non-Solar) shall be carried out henceforth in accordance with the Commission's Order dated 30.03.2017 in Petition No. 2/SM/2017.

(b) Deposit of the differential amount of Rs.500/- per REC with the Commission shall be discontinued.

3. Accordingly, this office letters dated 20.07.2017 and 23.08.2017 stands superseded by this letter.

4. This issues with the approval of the Commission.

Yours faithfully,

(T. Rout)  
Chief (Legal)

Copy to:

Shri K.V.S. Baba  
Chief Executive Officer (CEO)  
Power System Operation Corporation Limited  
B-9, Qutab Institutional Area, Katwaria Sarai  
New Delhi-110016

तीसरी मंजिल, चन्द्रलोक बिल्डिंग, 36, जनपथ, नई दिल्ली-110 001  
Third Floor, Chanderlok Building, 36, Janpath, New Delhi-110 001  
Phone : 91-11-2335 3503 Fax : 91-11-2375 3923 E-mail : info@cercind.gov.in



# Annexure P

ITEM NO.33

COURT NO.11

SECTION XVII

S U P R E M E C O U R T O F I N D I A  
RECORD OF PROCEEDINGS

341

Civil Appeal No(s). 4801/2018

INDIAN WIND POWER ASSOCIATION (NRC)

Appellant(s)

VERSUS

CENTRAL ELECTRICITY REGULATORY COMMISSION (CERC) & ANR.

Respondent(s)

(FOR ADMISSION and I.R. and IA No.67237/2018-STAY APPLICATION)

Date : 14-05-2018 This appeal was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE ROHINTON FALI NARIMAN  
HON'BLE MR. JUSTICE ABHAY MANOHAR SAPRE

For Appellant(s) Mr. K.V.Vishwanathan, Sr. Adv.  
Mr. Abhishek Raj, Adv.  
Mr. Vishal Gupta, AOR

For Respondent(s) Mr. Nikhil Nayyar, AOR  
Mr. N.Sai Vinod, Adv.  
Mr. Dhananjay Baijal, Adv.  
Ms. Smriti Shah, Adv.  
Mr. Divyanshu Rai, Adv.

UPON hearing the counsel the Court made the following  
O R D E R

Appeal admitted.

Interim orders dated 08.05.2017 and 14.07.2017 to  
continue

However, we clarify that this interim order will not  
apply to RECs issued on or after 01.04.2017.

(SHASHI SAREEN)  
AR CUM PS

(SAROJ KUMARI GAUR)  
BRANCH OFFICER

# Annexure Q 342

## GUJARAT ELECTRICITY REGULATORY COMMISSION (GERC)

GUJARAT ELECTRICITY REGULATORY COMMISSION (PROCUREMENT OF ENERGY FROM RENEWABLE SOURCES) (SECOND AMENDMENT) REGULATIONS, 2018

**Notification: No. 01 of 2018**

In exercise of Powers conferred under Section 61, 86 and 181 of the Electricity Act, 2003 (Act No. 36 of 2003) and all other powers enabling it in this behalf, and after previous publication, the Gujarat Electricity Regulatory Commission hereby makes the following regulations, to amend Gujarat Electricity Regulatory Commission (Procurement of Energy from Renewable Sources) Regulations, 2010 (hereinafter referred to as "The Principal Regulations") namely:

### **1) Short Title Extent and Commencement:**

(i) These regulations shall be called the Gujarat Electricity Regulatory Commission (Procurement of Energy from Renewable Sources) (Second Amendment) Regulations, 2018.

(ii) These Regulations shall extend to the whole of the State of Gujarat.

2) These regulations shall come into force with effect from the date of their publication in the Official Gazette.

### **3) Substitution of Table 1 of Regulation 4.1:**

Table 1 provided in the Gujarat Electricity Regulatory Commission (Procurement of Energy from Renewable Sources) (First Amendment) Regulations, 2014 is substituted by following Table - I and II:



TABLE - I

Year	Minimum Quantum of purchase (in %) from renewable energy sources (in terms of energy in kWh).			
	Wind (%)	Solar (%)	Others (Biomass, Bagasse, Hydro and MSW) (%)	Total (%)
(1)	(2)	(3)	(4)	(5)
2010-11	4.5	0.25	0.25	5.0
2011-12	5.0	0.5	0.5	6.0
2012-13	5.5	1.0	0.5	7.0
2013-14	5.5	1.0	0.5	7.0
2014-15	6.25	1.25	0.5	8.0
2015-16	7.0	1.5	0.5	9.0
2016-17	7.75	1.75	0.5	10.0

TABLE - II

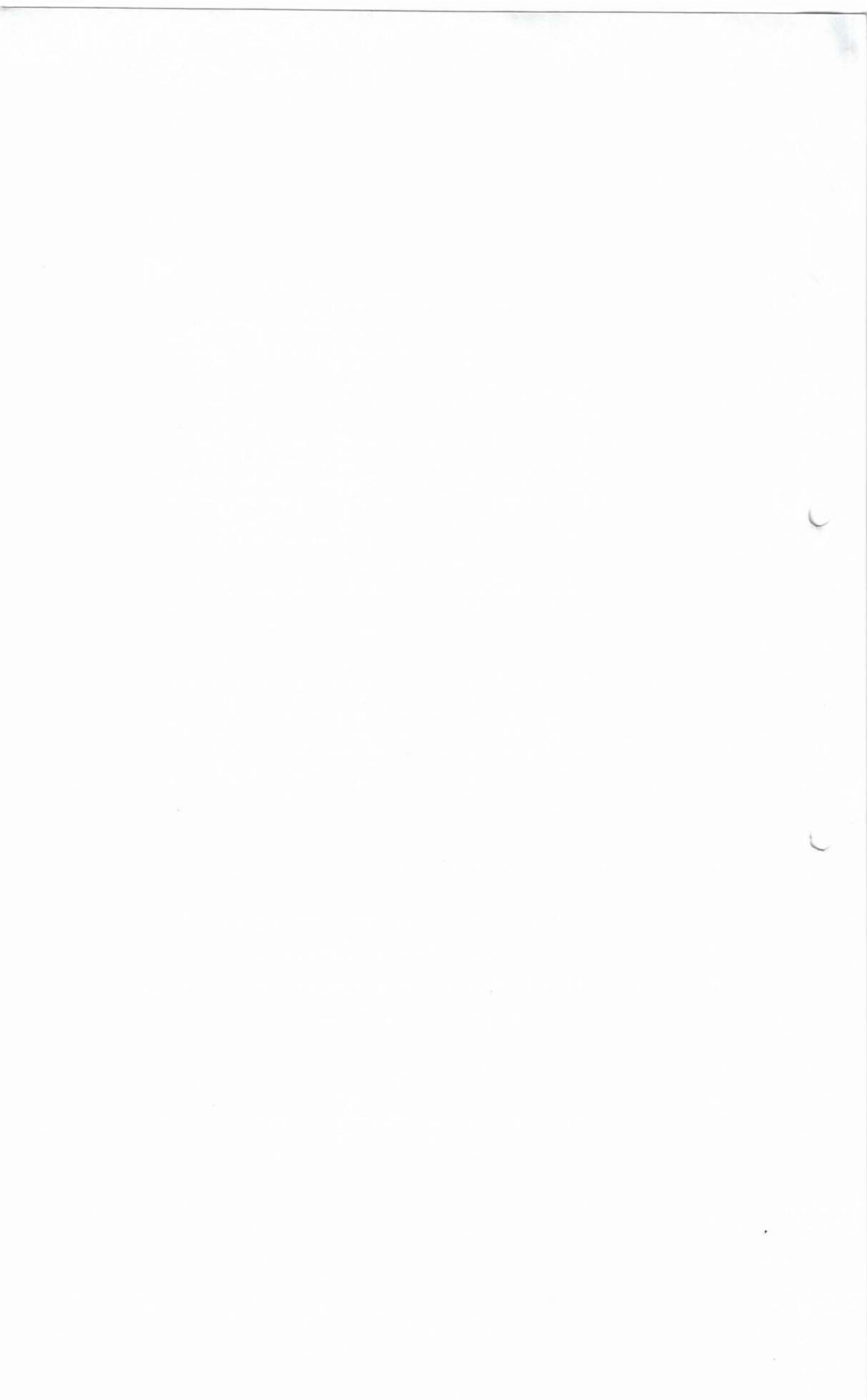
Year	Minimum Quantum of purchase (in %) from renewable energy sources (in terms of energy in kWh).			
	Wind (%)	Solar (%)	Others (Biomass, Bagasse, MSW and Hydro) (%)	Total (%)
(1)	(2)	(3)	(4)	(5)
2017-18	7.75	1.75	0.5	10.00
2018-19	7.95	4.25	0.5	12.70
2019-20	8.05	5.5	0.75	14.30
2020-21	8.15	6.75	0.75	15.65
2021-22	8.25	8.0	0.75	17.00

**4) Substitution of para 2 of Principal Regulation 4.1:**

If the above mentioned minimum quantum of power purchase either from Solar or Wind or Others (including Biomass, Bagasse, Hydro and MSW) is not available in a particular year of FY 2017-18 to 2021-22, then in such cases, additional renewable energy available either from Solar or Wind or Others shall be utilised for fulfilment of RPO in accordance with Column 5.

**5) Addition in Regulation 4.1 of the Principal Regulation:**

A new third para is added after second para of Regulation 4.1 of the Principal Regulations as under:





**344**

Distribution Licensee(s) shall compulsorily procure 100% power produced from all the Waste-to-Energy Projects in the State of Gujarat, in the ratio of their procurement of power from all sources including their own, at the tariff discovered through a Competitive Bidding Process as envisaged in the Gujarat Waste to Energy Policy, 2016 subject to ceiling of generic tariff as determined by the Commission.

Sd/-  
[Roopwant Singh, IAS]  
Secretary  
Gujarat Electricity Regulatory Commission  
Gandhinagar, Gujarat

Place: Gandhinagar.  
Date: 21/04/2018.

**Annexure - I**

The Commission has received objections/suggestions from the following stakeholders in pursuant to public notice dated 01.08.2017, in the matter of Draft Regulations of Gujarat Electricity Regulatory Commission (Procurement of Energy from Renewable Sources) (Second Amendment) Regulations, 2017:

<b>Sr. No.</b>	<b>Name of Objectors</b>
1.	Clean Energy and Environment Office
2.	Gujarat Urja Vikas Nigam Limited (GUVNL)
3.	Shri K.K. Bajaj
4.	Indian Wind Turbine Manufacturer Association (IWTMA)
5.	Indian Wind Power Association (IWPA)
6.	Reliance Industries Limited (RIL)
7.	Utility Users' Welfare Association (UUWA)
8.	Ultratech Cement Limited
9.	Hindalco Industries Limited
10.	Grasim Industries Limited
11.	Indian Wind Energy Association (InWEA)
12.	Confederation of Indian Industry
13.	Energy Policy and Regulation, GE South Asia
14.	Sahajanand Power Management Private Limited



**Annexure - II**

**346**

The following stakeholders were present during the hearing on 01.09.2017, in the matter of Draft Regulations of Gujarat Electricity Regulatory Commission (Procurement of Energy from Renewable Sources) (Second Amendment) Regulations, 2017:

Sr. No.	Name of Objectors
1.	Gujarat Urja Vikas Nigam Limited (GUVNL)
2.	Indian Wind Power Association (IWPA)
3.	Reliance Industries Limited (RIL)
4.	Utility Users' Welfare Association (UUWA)
5.	Ultratech Cement Limited
6.	Hindalco Industries Limited
7.	Grasim Industries Limited
8.	Indian Wind Energy Association (InWEA)
9.	Confederation of Indian Industry
10.	Energy Policy and Regulation, GE South Asia

# Annexure R

## 347

### A RIL's RPO Obligation for Year 2017-18

Sr No	Manufacturing Site	Power Consumption (MWH)	RPO (%)		RPO(MWH)	
			Solar	Non-Solar	Solar	Non-Solar
1	Hazira	1460701	1.75%	8.25%	25562	120507
2	Dahej	914660	1.75%	8.25%	16007	75459
3	Total	2375361	1.75%	8.25%	41569	195967

### B Details of REC Trade carried out in March 2018

Sr No	Trade Date	REC Type	Qty	Seller Name
1	28-Mar-18	Non Solar	11781	Bajaj Finserv Limited
2	28-Mar-18	Non Solar	11731	Bajaj Finserv Limited
3	28-Mar-18	Non Solar	6456	Bajaj Finserv Limited
4	28-Mar-18	Non Solar	6675	Beta Wind Farm Pvt Limited
5	28-Mar-18	Non Solar	6868	Beta Wind Farm Pvt Limited
6	28-Mar-18	Non Solar	12803	BF Utilities Limited
7	28-Mar-18	Non Solar	1010	Echanda Urja Private Limited
8	28-Mar-18	Non Solar	6866	Echanda Urja Private Limited
9	28-Mar-18	Non Solar	12524	Enercon India Limited (Windworld)
10	28-Mar-18	Non Solar	6379	Enn Enn Corp Limited
11	28-Mar-18	Non Solar	7025	Gayatri Projects Limited
12	28-Mar-18	Non Solar	5853	Grace Infrastructure Systems Pvt Ltd
13	28-Mar-18	Non Solar	6709	HEG Limited
14	28-Mar-18	Non Solar	12879	ITC Limited
15	28-Mar-18	Non Solar	13320	Magpie Hydrel Construction Operation Industries Pvt. Limited
16	28-Mar-18	Non Solar	11473	Mawana Sugars Limited
17	28-Mar-18	Non Solar	7067	NSL Sugars Limited
18	28-Mar-18	Non Solar	6558	Paharpur Cooling Towers Limited



19	28-Mar-18	Non Solar	1286	Satia Industries Limited
20	28-Mar-18	Non Solar	3512	Shree Nakoda Ispat Limited
21	28-Mar-18	Non Solar	11606	Simran Wind Project Limited
22	28-Mar-18	Non Solar	11588	Simran Wind Project Limited
23	Total		181969	

**C Shortfall in RPO**

Sr No	Particular	Solar RPO	Non-Solar RPO
1	Total RPO	41569	195967
2	REC purchased	-	181969
3	Shortfall	41569	13998

T	Solar	Non Solar
7.66	0	7.66
<u>10.00</u>	<u>1.75</u>	<u>8.25</u>

EXECUTIVE

Saturday, March 16, 2019 at 5:18:15 PM India Standard Time 349

**Subject:** Fwd: Reliance GERC petition  
**Date:** Saturday, 16 March 2019 at 4:35:57 PM India Standard Time  
**From:** Nanavati Associates <email@nanavatiassociates.com>  
**To:** gerc@gercin.org <gerc@gercin.org>, wasim@gercin.org <wasim@gercin.org>  
**Attachments:** Final Draft Petition 2018-19.docx

Dear Sir,

Please find attached herewith the file.

With Kind Regards,

**For M/s. Nanavati Associates**  
Satyam Corporate Square, Block-B,  
B/h. Rajpath Club, Nr Friends Avenue,,  
Off. S.G. Road, Bodakdev, Ahmedabad 380 059  
Tel : +91-79-40038081 to 85 Fax : -91-79-40038086  
E-mail : [email@nanavatiassociates.com](mailto:email@nanavatiassociates.com)

**Highcourt :** Chamber No. 230/209, Advocates Chamber,  
South Concourse, Highcourt, Sola, Ahmedabad.  
Tele/Fax : +91-79-27663980

----- Forwarded message -----

**From:** Nisarg Desai <[nisarg@nanavatiassociates.com](mailto:nisarg@nanavatiassociates.com)>  
**Date:** Sat, Mar 16, 2019 at 4:19 PM  
**Subject:** Reliance GERC petition  
**To:** Nanavati Associates <[email@nanavatiassociates.com](mailto:email@nanavatiassociates.com)>

With Kind Regards,

**Nisarg M. Desai**  
**Advocate**

**For M/s. Nanavati Associates,**  
Satyam Corporate Square,  
Block-B, B/h. Rajpath Club, Nr Friends Avenue,,  
Off. S.G. Road, Bodakdev,  
Ahmedabad 380 059  
**Tel :** +91-79-40038081 to 85 **Fax :** -91-79-40038086

**Highcourt :** Chamber No. 230/209, Advocates Chamber,  
South Concourse, Highcourt, Sola, Ahmedabad.  
**Tele/Fax :** +91-79-27663980

**M:** +91-9879411067

*filed in file of Reliance  
wasim (16/3/19)*

*Executed lead  
Smti. Urmila  
for n-a  
Judy  
19/3/2019*





489634/CERC/2019

350



**GUJARAT ENERGY TRANSMISSION CORPORATION LIMITED**

Regd Office: Sardar Patel Vidyut Bhavan,  
Race Course, VADODARA-390007

(CIN: U40100GJ1999SGC036018)

Phone No. (0265) 2353086 (D)/Fax No. (0265) 2337918/2338164

Web site: [www.getco Gujarat.com](http://www.getco Gujarat.com) - Email: [serc.getco@gegmail.com](mailto:serc.getco@gegmail.com)



ACE(R & C)/EE-C/1660

SPEED POST

DATE: 13-9-19

Pet no: 1781/2019

To  
The Secretary  
Gujarat Electricity Regulatory Commission  
6th Floor, GIFT ONE,  
Road 5C, Zone 5, GIFT City,  
Gandhinagar - 382355,  
Gujarat, India.

- Hon'ble Chairman Sir
  - Hon'ble Member Sir (KMS)
  - Hon'ble Member Sir (PJT)
  - Hon'ble Secretary Sir
- Vaun  
20/9/19

Subject: Adjournment in Petition 1456 of 2014 and 1475 of 2014 scheduled to be heard before Hon'ble GERC on 16<sup>th</sup> September 2019.

Ref: Hearing Schedule in matter at GERC on 16-9-2019  
Request letter from Advocates Ramachandran & Associates dtd.12-9-2019

Sir,

With reference to hearing schedule on 16-9-2019 in petition No 1456 of 2014 and 1475 of 2014 to be heard before Hon'ble GERC. It is to state that our legal counsel Senior Advocate Mr. M G Ramachandran is unable to attend hearing as there is part heard matter in Hon'ble Appellate Tribunal. Request letter dtd.12-9-2019 from the office of Ramachandran and Associates in this regards is hereby enclosed for submission to Hon'ble Commission. It is requested that matter may be listed on 1-10-2019 or any working Saturday being 19-10-2019 or 2-11-2019 or thereafter as per the convenience of Hon'ble Commission.

It is requested to appraise the Hon'ble Commission accordingly.

With regards,  
Yours Faithfully

Created legal suit Vaun  
A. V. Vaun for use  
20/9/19

Addl. Chief Engineer (R&C)

Legal  
20/9/19

C.E.R.C.
Forward No: 4014
Date: 19 SEP 2019

Encl: as above

Copy to:

1. M/s Nayara Energy Limited,  
4<sup>th</sup> Floor, Power -II,  
Equinox Buisness Park,  
(Peninsula Techno Park),  
Off Bandra Kurla Complex, LBS Marg,  
Mumbai.....for Petition 1456 of 2014
2. Reliance Industries Limited,  
"VRAJ" Near Suvidha Shopping Center,  
Paldi, Ahmedabad.....for Petition 1475 of 2014

**Ramachandran & Associates**  
Advocates

351  
C-31, Friends Colony (East)  
New Delhi - 110 065 INDIA  
Tel : +91-11-26831065  
+91-11-26926102  
Fasc : +91-11-26322657  
E-mail : office@mgrlaw.in

12th September 2019

To  
The Gujarat Electricity Regulatory Commission  
6th Floor GIFT ONE  
Road 5-C Zone 5, GIFT CITY  
Gandhinagar - 382 355  
Gujarat

RE: PETITION NO. 1792 OF 2019, 1475 OF 2019, 1781 OF 2019  
RELiance INDUSTRIES LIMITED V. GETCO

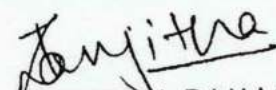
PETITION NO. 1456 OF 2014  
ESSAR OIL LIMITED V. GETCO AND OTHERS

Dear Sir

We represent the Respondent, GETCO in the above matters. Mr. M G Ramachandran, Senior Advocate is appearing in this matter for GETCO. The above mentioned Petition is listed on 16.09.2019. However Mr. Ramachandran has pre-fixed part heard matters in the Hon'ble Appellate Tribunal.

In view of the above, I am requesting for an adjournment in the matter and request that the matter may be listed on 01.10.2019 or any working Saturday being 19.10.2019 or 02.11.2019 or thereafter as per the convenience of the Hon'ble Commission.

Yours faithfully

  
(RANJITHA RAMACHANDRAN)



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Keyur D. Gandhi +91-9825030979  
Pranit K. Nanavati +91-9879106229  
Kunal K. Nanavati +91-9825005119

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Gujarat High Court Chamber Nos.:  
209 and 230  
Telefax: +91-79-27663980,  
27660692

No. NA/NMD/6911/2020

To,  
The Secretary,  
The Hon'ble Gujarat Electricity Regulatory Commission  
6th Floor, GIFT ONE  
Road 5C, Zone 5, GIFT City  
Gandhinagar 382 355

July 17, 2020

AD (Legal) / Ex (Legal) Vann  
Process PH 21/07/2020  
21/07/2020

INSTRUMENT NO - 2644
Date : 18 JUL 2020


**Sub:** - Regarding listing of Petition nos. 1781 of 2019 and 1792 of 2019

Dear Sir,

1. This is with regard to the captioned Petitions nos. 1781 and 1792 of 2019 filed by our client Reliance Industries Ltd. i.e., the Petitioner before this Honorable Commission praying for rolling over of RPO for the years 2017-18 and 2018-2019. Petition no. 1781 of 2019 was filed on 11.02.2019 and Petition no. 1792 of 2019 was filed on 16.03.2019. The Petitioner had also filed an Interlocutory Application on 04.10.2019 praying for amendment in the Petition no. 1792 of 2019. The Hon'ble Commission, vide letter dated 21.10.2019, had also directed the Petitioners to cure certain deficiencies, which were cured by the Petitioner vide its letter dated 24.10.2019.
2. The captioned Petitions were lastly listed for hearing before the Hon'ble Commission on 16.09.2019. Thereafter, the Petitions have not been listed for hearing.

3. The Petitions were filed in 2019 and are yet to be heard for Admission by the Hon'ble Commission, while the prayers prayed for in the Petitions are for roll over of RPO for the years 2017-18 and 2018-19.
4. In view of the abovementioned facts and circumstances, we request this Hon'ble Commission to list the captioned Petitions along with I.A. in Petition no. 1792 of 2019 for hearing, at the earliest possible date and oblige.

For Nanavati Associates,

  
Nisarg M. Desai  
Advocate



1792 of 2019 ← 178

Executive\_Varun

Monday, August 17, 2020 at 10:37:35 India Standard Time

**Subject:** Fwd: [External]Fwd: LETTTER TO GERC PETITION 1781 AND 1792  
**Date:** Sunday, 16 August 2020 at 5:03:37 PM India Standard Time  
**From:** Wasim Ansari <wasim@gercin.org>  
**To:** Varun Gupta <varun@gercin.org>  
**Attachments:** LETTTER TO GERC PETITION 1781 AND 1792.pdf

1781 of 2019 354

For kind perusal please  
- Hon'ble Chairman Sir  
- Hon'ble Member Sir  
- Hon'ble Member Sir  
- Hon'ble Secretary Sir  
Varun  
19/08/2020

FNA.

[Get Outlook for Android](#)

**From:** GERC <gerc@gercin.org>  
**Sent:** Friday, August 14, 2020 5:24:09 PM  
**To:** Wasim Ansari <wasim@gercin.org>; P.J.Jani <dydirlegal@gercin.org>  
**Subject:** Fwd: [External]Fwd: LETTTER TO GERC PETITION 1781 AND 1792

GERC

**From:** DB Shah <DB.Shah@ril.com>  
**Sent:** Friday, August 14, 2020 5:09:42 PM  
**To:** GERC <gerc@gercin.org>; D. R. Parmar <drparmar@gercin.org>  
**Subject:** Fwd: [External]Fwd: LETTTER TO GERC PETITION 1781 AND 1792

Dear Sirs,  
We have submitted attached request letter for early listing for hearing of the subject petition please  
Kindly do the needful pl  
With best regards  
Yours sincerely  
DBShah

*Desai*  
*Legal*  
*Process*  
*18/08/2020*

17/8 G.E.R.C.
Inward No - 3019
Date : 17 AUG 2020

[Get Outlook for iOS](#)

**From:** Harsh Brahmhatt <Harsh.Brahmbhatt@ril.com>  
**Sent:** Friday, August 14, 2020 4:49:01 PM  
**To:** DB Shah <DB.Shah@ril.com>; Anant Kapse <Anant.Kapse@ril.com>; Ashish B Shah <ashish.b.shah@ril.com>  
**Subject:** FW: [External]Fwd: LETTTER TO GERC PETITION 1781 AND 1792

Regards.

**From:** Nisarg Desai <nisarg@nanavatiassociates.com>  
**Sent:** Friday, August 14, 2020 4:32 PM  
**To:** efileing@gercin.org  
**Subject:** [External]Fwd: LETTTER TO GERC PETITION 1781 AND 1792

The e-mail below is from an external source. Please do not open attachments or click links from an unknown or suspicious origin.

Dear Sir,

Please find attached a letter requesting the Hon'ble Commission for the early listing of Petition nos. 1781

179  
355

and 1792 of 2019.

With Kind Regards,

**Nisarg M. Desai**  
**Associate Partner**  
**Nanavati Associates**  
**M: +91-9879411067**

**"Confidentiality Warning:** This message and any attachments are intended only for the use of the intended recipient(s), are confidential and may be privileged. If you are not the intended recipient, you are hereby notified that any review, re-transmission, conversion to hard copy, copying, circulation or other use of this message and any attachments is strictly prohibited. If you are not the intended recipient, please notify the sender immediately by return email and delete this message and any attachments from your system.

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Nanpura, Surat - 395 001  
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Tel/Fax : +91-0261-3996152  
Email: [surat@nanavatiassociates.com](mailto:surat@nanavatiassociates.com)

Gujarat High Court Chamber Nos :  
209 and 230  
Telefax: +91-79-27663980

August 14, 2020

To,  
The Secretary,  
The Hon'ble Gujarat Electricity Regulatory Commission  
6th Floor, GIFT ONE  
Road 5C, Zone 5, GIFT City  
Gandhinagar 382 355

**Sub:** - Request for listing of Petition nos. 1781 of 2019 and 1792 of 2019

Dear Sir,

1. This is with regard to the captioned Petitions nos. 1781 and 1792 of 2019 filed by our client Reliance Industries Ltd. i.e., the Petitioner before this Honorable Commission praying for rolling over of RPO for the years 2017-18 and 2018-2019. Petition no. 1781 of 2019 was filed on 11.02.2019 and Petition no. 1792 of 2019 was filed on 16.03.2019. The Petitioner had also filed an Interlocutory Application on 04.10.2019 praying for amendment in the Petition no. 1792 of 2019. The Hon'ble Commission, vide letter dated 21.10.2019, had also directed the Petitioners to cure certain deficiencies, which were cured by the Petitioner vide its letter dated 24.10.2019.
2. The captioned Petitions were lastly listed for hearing before the Hon'ble Commission on 16.09.2019. Thereafter, the Petitions have not been listed for hearing.
3. The Petitions were filed in 2019 and are yet to be heard for Admission by the Hon'ble Commission, while the prayers prayed for in the Petitions are for roll over of RPO for the years 2017-18 and 2018-19. We have also filed a request

357

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**NANAVATI ASSOCIATES**

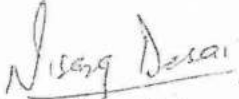
Advocates, Patent & Trade Mark Attorneys

Continuation Sheet

letter dated 17.07.2020 requesting the Hon'ble Commission to list the captioned Petitions along with IA for hearing at an earliest possible date.

4. In view of the abovementioned facts and circumstances, we once again request this Hon'ble Commission to list the captioned Petitions along with I.A. in Petition no. 1792 of 2019 for hearing, at the earliest possible date and oblige.

For Nanavati Associates,

  
For Keyur Gandhi  
Advocate



BEFORE THE GUJARAT ELECTRICITY REGULATORY COMMISSION

PETITION NO. 1781 OF 2019

for kind personal pl.  
- Hon'ble chairman  
- " Member  
- " Member

RELIANCE INDUSTRIES LTD

.... Petitioners Secretary,

Versus

31/3/22

.... Respondents

**VAKALATNAMA**

We, RELIANCE INDUSTRIES LTD  
do hereby Nominate, authorize and appoint



**GANDHI LAW ASSOCIATES  
ADVOCATES & SOLICITORS**

Represented by Keyur D. Gandhi, Nirav Joshi, Raheel S. Patel, Kunal J. Vyas, Nisarg Desai, Divya Pravalikha Batthini, Rachna Pastore, Devarsh Trivedi and Divyesh Bais, hereinafter called the Advocates, to be my/our Advocates in the above noted matter and authorize them:

To act, appear and plead in the above noted matter in this Hon'ble Court and/or any Quasi-Judicial Authority or any other Court where the same may be tried or heard or in the appellate courts.

To sign, file and present representations, pleadings, applications, appeals, cross objections or petitions for execution, review, revision, restoration, withdrawal, compromise or other petitions, replies objections or affidavits or other documents as may be deemed necessary or proper for the prosecution of the said case at all stages.

To file and take back documents.

To withdraw or compromise the said case of submit to arbitration any differences or disputes that may arise in or touching upon any matter relating to the said case.

To take out execution proceedings.

To deposit, draw and receive moneys, cheques and grant receipts therefore and to do all things and acts which may be necessary to be done for the progress and in the course of the prosecution of the said case.

To appoint, instruct any other legal practitioner, authorizing him to exercise the power and authorities hereby conferred upon the advocate/s;

AND we agree to ratify all acts done by the aforesaid advocate/s in pursuance of this authority.

Dated this the \_\_\_ day of \_\_\_\_\_, 2022.

Nisarg Desai

Accepted  
Contact Details for service:

Phone : +91-\_\_\_\_\_  
Email: efiling@gandhilaw.in

Client(s) Signature : \_\_\_\_\_  
Name : \_\_\_\_\_  
Designation : \_\_\_\_\_  
Company Seal : \_\_\_\_\_

For, Reliance Industries Ltd

Ashish Bhal  
Authorised Signator



AD (Legal)/Ex (Legal)  
Put in relevant files  
PH  
31/03/22

Legal  
A-30/3  
I.R.C.  
Inward No - 1883  
Date : 30 MAR 2022

15/3/22  
W.D.









BEFORE THE GUJARAT ELECTRICITY REGULATORY COMMISSION

PETITION NO. 1781 OF 2019

Reliance Industries Ltd. .... Petitioners

Versus

..... Respondents

**VAKALATNAMA**

We, Reliance Industries Ltd.  
do hereby Nominate, authorize and appoint

**GANDHI LAW ASSOCIATES  
ADVOCATES & SOLICITORS**

Represented by Keyur D. Gandhi, Nirav Joshi, Raheel S. Patel, Kunal J. Vyas, Nisarg Desai, Divya Pravalikha Batthini, Rachna Pastore, Devarsh Trivedi and Divyesh Bais, hereinafter called the Advocates, to be my/our Advocates in the above noted matter and authorize them:

To act, appear and plead in the above noted matter in this Hon'ble Court and/or any Quasi-Judicial Authority or any other Court where the same may be tried or heard or in the appellate courts.

To sign, file and present representations, pleadings; applications, appeals, cross objections or petitions for execution, review, revision, restoration, withdrawal, compromise or other petitions, replies objections or affidavits or other documents as may be deemed necessary or proper for the prosecution of the said case at all stages.

To file and take back documents.

To withdraw or compromise the said case or submit to arbitration any differences or disputes that may arise in or touching upon any matter relating to the said case.

To take out execution proceedings.

To deposit, draw and receive moneys, cheques and grant receipts therefore and to do all things and acts which may be necessary to be done for the progress and in the course of the prosecution of the said case.

To appoint, instruct any other legal practitioner, authorizing him to exercise the power and authorities hereby conferred upon the advocate/s;

AND we agree to ratify all acts done by the aforesaid advocate/s in pursuance of this authority.

Dated this the 26<sup>th</sup> day of September, 2022.

Nisarg Desai

Accepted  
Contact Details for service:

Phone : +91- 9879411067  
Email: efiling@gandhilaw.in

For, Reliance Industries Ltd.

Ashish B Shah  
Authorised Signatory

Client(s) Signature : \_\_\_\_\_  
Name : Ashish Shah  
Designation : Senior General Manager - legal  
Company Seal : \_\_\_\_\_





**Subject:** Request for listing of Petition nos. 1781 and 1792 of 2021 along with IAs  
**Date:** Monday, 14 November 2022 at 7:44:59 PM India Standard Time  
**From:** Nisarg Desai  
**To:** Wasim Ansari  
**CC:** P.J.Jani, GERC

359

Dear Sir,

We refer to the captioned matters which were listed on 01.11.2022 by the Hon'ble Commission wherein the Petitioner has filed IAs for amendment.

In view of the fact that other Petitions of the Petitioner are listed on 24.11.2022 wherein Sr. Counsel Mr. Soparkar appears on behalf of the Petitioner, we request the Hon'ble Commission to also list the captioned Petition Nos. 1781 and 1792 of 2021 also on 24.11.2022, subject to convenience of the Hon'ble Commission.

Warm Regards,

Nisarg M. Desai  
Partner  
+91-98794 11067



For kind perusal pl.

- Hon'ble chairman
- " Member
- " Member
- Secretary

Wtk  
15/11/22

AD (Legal) / Ex (Legal)  
Bases  
PK  
15/11/22

Legal  
15/11

**G.E.R.C.**

Inward No - 6073

Date: 15 NOV 2022




BEFORE THE GUJARAT ELECTRICITY REGULATORY COMMISSION,  
GANDHINAGAR

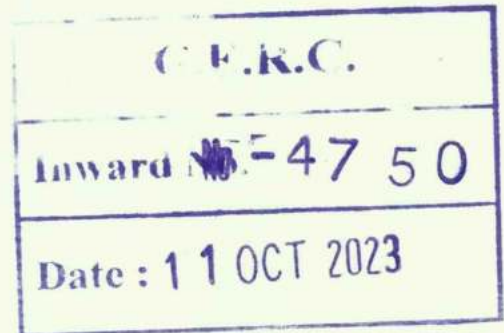
PETITION NO. 1781 OF 2019

RELIANCE INDUSTRIES LIMITED

...PETITIONER

INDEX

SR. NO.	ANNEXURE	PARTICULARS	PAGE NO.
1	-	Amended Memo of Petition	1 - 21



Date: 10.10.2023

Place: Ahmedabad

*Yadav*

For, Gandhi Law Associates

Advocates for Petitioner



1  
360

**AMENDED MEMO OF PETITION**

**BEFORE THE GUJARAT ELECTRICITY REGULATORY COMMISSION,  
GANDHINAGAR**

**PETITION NO. 1781 OF 2019**

IN THE MATTER OF :

Regulation 5 of Gujarat Electricity Regulatory Commission  
(Procurement of Energy from Renewable Sources)  
Regulations, 2010.



AND

Gujarat Electricity Regulatory Commission (Procurement of  
Energy from Renewable Sources) (First Amendment)  
Regulations, 2014.

AND

Gujarat Electricity Regulatory Commission (Procurement of  
Energy from Renewable Sources) (Second Amendment)  
Regulations, 2018.

AND

**IN THE MATTER OF:**

Reliance Industries Limited  
Having its Office Address at:  
"Vraj", Nr. Chandanbala Tower,  
Opp. Suvidha Shopping Centre,  
Paldi, Ahmedabad-380 007

...Petitioner

**MOST RESPECTFULLY SHEWETH THAT:**

**Preamble**

1. The Petitioner is in the business, inter alia, of producing Petrochemicals and has Captive Power Plants at all major sites of their industries in the State fulfilling the energy requirements of their industries through captively produced power. In these power plants, which are liquid fluid or gas based, heat is cogenerated as a by- products or industrial waste and is harness for further power, steam generation and other industrial use. The Petitioner has installed heat recovery system generators which recover heat from the exhaust of gas

*Answer*

NO. 10  
STATE OF GUJ.  
ED. H. SARDHANI  
A





turbine and same heat is used for industrial purpose and running steam turbines which are in turn used for further power generation. Further in order to have fuel redundancy and to generate power and steam at economical rate, the Petitioner has also installed, under Group Captive, Coal Based plants of 360 MW and 2500 tph of Boiler at Hazira and 270 MW and 2000 tph at Dahej. The Petitioner's Captive Power Plants have all been recognised as co-generation plants by the appropriate Authorities under the Act.

2. On 8<sup>th</sup> January, 2010, the Hon'ble Commission notified draft Regulations for promoting sale of power from renewable sources energy to any person and for procurement of energy from renewable sources by distribution licensees within the State of Gujarat vide Notification No. 1 of 2010. On the same day, the Hon'ble Commission issued Public Notice for filing objections/ suggestions regarding the draft Regulations proposed as aforesaid.
3. On 4<sup>th</sup> March, 2010, the Hon'ble Commission conducted a public hearing for the draft Regulations. The Petitioner participated at the hearing and made oral submissions and produced documents in support of their objections and suggestions. The Petitioner craves leave to refer to and rely upon such documents produced before the GERC at time of hearing, if and when necessary.
4. On 17<sup>th</sup> April, 2010, the Hon'ble Commission issued Notification No. 3 of 2010 containing the Regulations called as "Gujarat Electricity Regulatory Commission (Procurement of Energy from Renewable Sources) Regulations, 2010" hereinafter referred to as "Regulations". Annexed hereto and marked as Annexure-"A" is a copy of the said Regulations.
5. On 1st July, 2015, the Hon'ble Commission issued Notification No.2 of 2015 wherein the Renewable Purchase Obligation (RPO) was made applicable on captive users with effect from 1st July, 2015. Annexed hereto and marked as Annexure-"B" is a copy of the said notification.
6. The Petitioner is filing the present Application seeking appropriate directions under Regulation 5 of Gujarat Electricity Regulatory Commission (Procurement of Energy from Renewable Sources) Regulation 2010 and also under Regulation 84 of GERC (Conduct of

*Arshel*

MC  
DEPARTMENT  
OF  
AGRICULTURE  
WASHINGTON, D.C. 20250  
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Business Regulations) in respect of purchase of balance REC certificate for the FY 2017-2018.

**BACKGROUND FACTS:**

The Petitioner states that the Regulations, inter alia, provide that the obligated entity can discharge the mandatory obligations (to purchase electricity from renewable energy sources) by purchasing the Certificates issued under the Central Electricity Regulatory Commission (Terms and conditions for recognition and issuance of Renewable Energy Certificate for Renewable Energy Generation) Regulations, 2010 (hereinafter referred to as "CERC (REC) Regulations"). Regulation 5 of the said Regulations is quoted here-in- below for ready reference:

**5. Certificates under the Regulations of the Central Commission**

5.1. Subject to the terms and conditions contained in these Regulations, the Certificates issued under the Central Electricity Regulatory Commission's (Terms and Conditions for recognition and issuance of Renewal Energy Certificate for Renewable Energy Generation) Regulations, 2010 shall be the valid instruments for discharge of the mandatory obligations set out in these Regulations for the obligated entity to purchase electricity from renewable energy sources.

Provided that in the event of the obligated entity fulfilling the renewable purchase obligations by purchase of certificates, the obligation to purchase electricity from generation based on renewable energy other than solar can be fulfilled by purchase of non-solar certificates and the obligation to purchase electricity from generation based on solar as renewable energy source can be fulfilled by purchase of solar certificates only. If solar certificates are not available in a particular year, then in such cases, additional non-solar certificates shall be purchased for fulfilment of the RPO in accordance with Table - 1.

5.2 Subject to such direction as the Commission may give from time to time, the obligated entity shall act consistent with the Central Electricity Commission's

*Ansstel*





(Terms and Conditions for recognition and issuance of Renewal Energy Certificate for Renewable Energy Generation) Regulations, 2010 notified by the Central Electricity Regulatory Commission with regards to the procurement of the certificates for fulfilment of the Renewal Purchase Obligation under these Regulations.



5.3 The Certificates purchased by the obligated entities from the power exchange in terms of the regulation of the Central Commission mentioned in clause 5.1 of these Regulations shall be deposited by the obligated entities with the Commission within 15 days of the purchase."

**9. Consequences of default**

9.1.....

Provided that in case of any genuine difficulty in complying with the renewable purchase obligation because of non-availability of power from renewable energy sources or the RECS, the obligated entity can approach the Commission to carry forward the compliance requirement to the next year:

Provided further that where the Commission has consented to carry forward of compliance requirement, the provision regarding payment of regulatory charges as specified above shall not be applicable".

8. The Petitioner states that being aggrieved by the said Regulations, Petitioner challenged the same before the Hon'ble High Court of Gujarat, by filing Special Civil Application No. 791 of 2011. The Petitioner filed the Petition, inter alia, on the basis that inclusion of all captive users of electricity including those producing electricity through cogeneration within the "obligated entity" has led to absurd result, viz. that, far from putting the co-generators on par with renewable source of energy, the impugned Regulations actually put them at a significant disadvantage, by putting an additional burden on cogeneration power plants to purchase power generated from renewable sources at a higher costs and without there being any

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requirement for such power. The Hon'ble Gujarat High Court, by its common judgment and order dated 12th March, 2015, rejected the Petition filed by the Petitioner and other parties. Annexed hereto and marked as Annexure-"C" is copy of Order dated 12th March, 2015 passed by Hon'ble Gujarat High Court.

ENT OF INDIA

The Petitioner states that being aggrieved by the common judgment/ Order dated 12th March, 2015, the Petitioner filed Letters Patent Appeal No.832 of 2015 before the Hon'ble Gujarat High Court. In the said Appeal, the Petitioner had also filed a Civil Application No. 4804 of 2015 seeking stay of the impugned Judgment and Order dated 12th March, 2015. On 5th May, 2015, the Hon'ble Gujarat High Court disposed of the said Application by passing following order:

"1.....

8. Therefore, instead of granting stay of the impugned Judgment and Order it shall be in the interest of justice to observe that the said Regulations shall though come in to force they shall be subject to the final decision given in the Appeals. Applications are disposed of accordingly. Rule is discharged accordingly."

Annexed hereto and marked as Annexure-"D" is copy of Order dated 5th May, 2015 passed by the Hon'ble Gujarat High Court.

10. The Petitioner states that on 14th January, 2010, Central Electricity Regulatory Commission ("CERC") notified "CERC (REC) Regulations. The CERC, in consultation with Central Agencies and Forum of Regulators from time to time provide for floor price and forbearance price separately for solar and non-solar renewable energy certificate. Annexed hereto and marked as Annexure-"E" is a copy of the Central Electricity Regulatory Commission (Terms and Conditions for Recognition and Issuance of Renewable Energy Certificate for Renewable Energy Generation), Regulation 2010.

11. On 4th March, 2014, GERC issued Gujarat Electricity Regulatory Commission (Procurement of Energy from Renewable Sources) (First Amendment) Regulations, 2014.

Arshad

SECRETARY  
B/C



By the said Regulations, GERC specified the minimum quantum of purchase from the renewable energy sources for the FY 2010-11 till FY 2016-17. Annexed hereto and marked as Annexure-"F" is copy of said Regulations.



12. The Petitioner states that CERC, on a suo motu Petition being Petition No. 99 of 2010 prescribed forbearance price and floor price for dealing in Renewable Energy Certificate ("REC") under CERC (REC) Regulations, 2010. CERC, vide its Order dated 30th March, 2017 reduced the price of REC with effect from 1st April, 2017 as under:

(i) Non-solar RECS		
	Till 31.03.2017 (Rs./MWH)	W.E. 01.04.2017 (Rs./MWH)
Forbearance Price	3300	3000
Floor Price	1500	1000
(ii) Solar RECs		
Forbearance Price	5800	2400
Floor Price	3500	1000

Annexed hereto and marked as Annexure-"G" is copy of CERC's Order dated 30th March, 2017.

13. Petitioner states that being aggrieved by the CERC's Order dated 30th March, 2017 reducing the prices of REC, the same was challenged by (i) Green Energy Association vide Appeal No. 95 of 2017 and (ii) Indian Wind Power Association by filing Appeal No. 105 of 2017 before the Hon'ble Appellate Tribunal for Electricity ("APTEL").

14. The Petitioner states that on 25th April, 2017, the Hon'ble APTEL admitted the Appeals filed by Indian Wind Power Association and Green Energy Association. However, the Hon'ble APTEL refused to grant stay on the Order dated 30th March, 2017. Annexed hereto and marked as Annexure-"H" is copy of APTEL's Order dated 25th April, 2017.

*As per*

U.S. DEPARTMENT OF JUSTICE  
FEDERAL BUREAU OF INVESTIGATION  
WASHINGTON, D.C. 20535  
MAY 19 1964  
VE



15. Being aggrieved by the Order dated 25th April, 2017 passed by the Hon'ble APTEL, Indian Wind Power Association and Green Energy Association filed Civil Appeals before the Hon'ble Supreme Court of India. The Hon'ble Supreme Court, by its Order dated 8th May, 2017 stayed the Order passed by Ld. CERC. Annexed hereto and marked as Annexure-"I" is copy of Order dated 8th May, 2017.

16. The Petitioner states that in compliance of the Hon'ble Supreme Court's order dated 8th May, 2017, Indian Energy Exchange ("IEX"), by its Circular No. IEX/MO/242/2017 dated 26th May, 2017 suspended trading of REC. Annexed hereto and marked as Annexure- "J" is copy of the aforesaid Circular issued by IEX.

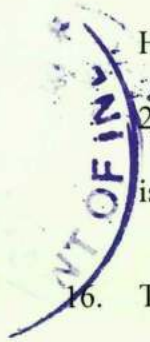
17. The Petitioner states that on 14th July, 2017, the Hon'ble Supreme Court disposed of the Appeal filed by non-solar energy producers with directions that (i) REC shall be traded at floor price as per Order of CERC dated 30th March, 2017 and (ii) difference between the earlier floor price and present floor price shall be deposited by the obligated entity with the Ld. CERC. Annexed hereto and marked as Annexure- "K" is copy of Order dated 14th July, 2017.

18. The Petitioner states that in view of Hon'ble Supreme Court order dated 14th July, 2017, IEX, by its circular no. IEX/IMO/248/2017 dated 24th July, 2017, recommenced trading of Non Solar REC. By the said circular, the IEX also informed that trading of Solar REC shall remain suspended till further notice. Annexed hereto and marked as Annexure-"L" is copy of circular dated 24th July, 2017 issued by IEX.

19. It is stated that on 20th September, 2017, the Hon'ble Supreme Court disposed of the Appeal filed by Green Energy Association. By the said Order, the Hon'ble Supreme Court allowed Ld. CERC to extend REC until 31st March, 2018. The said order was continued till Ld. APTEL deciding the Appeal. Annexed hereto and marked as Annexure-"M" is copy of order dated 20th September, 2017.

20. The Petitioner states that on 12th April, 2018, the Ld. APTEL rejected the Appeals filed by Indian Wind Power Association and Green Energy Association upholding the Order passed

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by CERC. Annexed hereto and marked as Annexure-"N" is copy of the said Order dated 12th April, 2018.

21. It is stated that pursuant to Hon'ble Supreme Court order and Hon'ble APTEL's order, on 23rd April, 2018, the Ld. CERC was pleased to issue following directions:-

- a. trading of RECS (Solar and Non-Solar) shall be carried out henceforth in accordance with the Commission's Order dated 30.03.2017 in Petition No.2/SM/2017.
- b. deposit of the differential amount of Rs.500/- per REC with the Commission shall be discontinued. Annexed hereto and marked as Annexure-"O" is copy of the Letter dated 23rd April, 2018 issued by CERC.

22. The Petitioner states that Indian Wind Power Association challenged the Order dated 12th April, 2018, by filing Civil Appeal (being Appeal No. 4801 of 2018) before Hon'ble Supreme Court. The Hon'ble Supreme Court, by its order dated 8th May, 2018, was pleased to admit the Appeal and continue interim orders dated 8th May, 2017 and 14th July, 2017. Annexed hereto and marked as Annexure-"P" is copy of Order dated 14th May, 2018.

23. On 24th April, 2018, the Ld. GERC issued Gujarat Electricity Regulatory Commission (Procurement of Energy From Renewable Sources) (Second Amendment) Regulations, 2018. By the said Amendment, it substituted the following Table - I and II:-

**"TABLE-I**

Year	Minimum Quantum of purchase (in %) from renewable energy sources (in terms of energy in KWh.)			
	Wind (%)	Solar (%)	Others (Biomass, Bagasee, Hydro and MSW) (%)	Total (%)
(1)	(2)	(3)	(4)	(5)
2010-11	4.5	0.25	0.25	5.0
2011-12	5.0	0.5	0.5	6.0
2012-13	5.5	1.0	0.5	7.0

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2013-14	5.5	1.0	0.5	7.0
2014-15	6.25	1.25	0.5	8.0
2015-16	7.0	1.5	0.5	9.0
2016-17	7.75	1.75	0.5	10.0

**TABLE-II**

Year	Minimum Quantum of purchase (in %) from renewable energy sources (in terms of energy in KWh.)			
	Wind (%)	Solar (%)	Others (Biomass, Bagasee, MSW and Hydro) (%)	Total (%)
(1)	(2)	(3)	(4)	(5)
2017-18	7.75	1.75	0.5	10.00
2018-19	7.95	4.25	0.5	12.70
2019-20	8.05	5.5	0.75	14.30
2020-21	8.15	6.75	0.75	15.65
2021-22	8.25	8.0	0.75	17.00

**4) Substitution of para 2 of Principal Regulation 4.1:**

*If the abovementioned minimum quantum of power purchase either from Solar or Wind or Others (including Biomass, Bagasse, Hydro and MSW) is not available in a particular year of FY 2017-18 to 2021-22, then in such cases, additional renewable energy available either from Solar or Wind or Others shall be utilised for fulfilment of RPO in accordance with Column 5."*

Annexed hereto and marked as **Annexure-"Q"** is copy of Regulations.

24. The Petitioner states that during FY 2017-18 in the abovementioned circumstances:

- (i) there was no RPO specified for the year 2017-18 by Hon'ble Commission, it was specified only on 21st April, 2018;

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(ii) there was no trading of solar RECs from May 2017 till March 2018 as the Order passed by CERC was stayed by the Hon'ble Supreme Court in Appeal filed by Solar Energy Producers;

(iii) trading of REC in case of non-solar energy is done at reduced floor price, however, the difference between the earlier floor price and present reduced floor price is deposited with CERC.



In the abovementioned background of facts, the submissions of the Petitioner are as under:-

**SUBMISSIONS OF THE PETITIONER:**

24. The Petitioner submits that the generation of REC by Renewable Energy producers is on decline. For the aforesaid reasons and low generation of REC, there is scarcity of REC in the market. Following table of analysis of REC Market will inter alia demonstrate that (i) the generation of REC is on decline and (ii) there are not enough Non Solar REC available in the market for obligated entities for discharge of obligations under the Regulations:

REC Market Analysis

**a. Non-Solar RECs**

Sr. No.	Description	2015-16	2016-17	2017-18
1.	Opening balance REC	1,05,77,625	1,32,81,006	1,29,26,303
2.	Additional in REC	73,58,397	60,10,472	49,92,891
3.	REC sold	43,06,952	59,30,725	1,59,75,749
4.	REC Retained by Generator	3,48,064	4,34,450	4,49,261
5.	Closing balance REC (available)	1,32,81,006	1,29,26,303	14,94,184

**b. Solar RECs**

Sr. No.	Description	2015-16	2016-17	2017-18

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1.	Opening balance REC	15,99,598	33,10,962	49,08,376
2.	Additional in REC	23,75,443	21,85,291	13,33,925
3.	REC sold	6,48,201	5,57,014	2,08,402
4.	REC Retained by Generator	15,878	30,863	35,798
5.	Closing balance REC (available)	33,10,962	49,08,376	59,98,101

(However, there is no trading of Solar RECs as aforesaid)

25. The Petitioner submits that the regulations inter alia provide that the captive power producers can fulfil renewable purchase obligations through REC. Regulation 8 is reproduced herein below for ready reference.

**8. Captive and Open Access User(s)/ Consumer(s)**

8.1. The quantum of RPO mentioned in clauses 4.1 shall be applicable to captive and open access user(s)/ consumer(s) from the date as would be notified in the Official Gazette.

8.2 .....

8.3. Captive and Open Access Consumer(s)/ User(s) shall purchase renewable energy as stated in Table 1 of this Regulations. If the Captive user(s) and Open Access consumer(s) are unable to fulfil the criteria, the shortfall of the targeted quantum would attract payment of regulatory charge as per clause 9.

8.4. Captive/ Open Access consumer(s)/ User(s) may fulfil its RPO through the renewable energy certificate as provided in clause 5 above.

26. The Petitioner submits that in view of the events which occurred subsequent to the order dated 5th May, 2015 and the orders passed by Ld. APTEL and Hon'ble Supreme Court in respect of trading of REC, there was a great deal of uncertainty in compliance of obligations

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under the impugned regulations. In terms of order dated 5th May, 2015, the impugned regulations are subject to outcome of the present Appeal.

27. The Petitioner submits that since matter related to RPO on Cogeneration captive plants is sub-judice and pending before the Hon'ble Gujarat High Court, the Petitioner purchased Non Solar REC for its RPO on coal based power plants at its Hazira and Dahej facility. in anticipation of RPO of FY 2017-18. Due to non-availability of sufficient Non-Solar REC, the Petitioner was able to get 92% of what it bid. The Petitioner again in anticipation, purchased some quantity of Non Solar REC in April 2018 to meet balance Non-Solar REC for FY 2017-18 and remaining REC to be utilised for its RPO in FY 2018-19.
28. The Petitioner submits that REC targets for the FY 2017-18 were notified this year. The Petitioner submits that they have purchased Non-Solar REC certificates for the FY 2017-18 in the month of March 2018. The Petitioner submits that in the Month of March 2018, selling bid for Non-Solar REC was lower than the Purchase bid, at the end of trade, all the sell bid got cleared. The Petitioner submits that only 92% of their buy bid of Non-Solar REC got cleared thereby making shortfall of 8% of the required compliance. The Petitioner submits that on issuance of RPO targets for FY 2017-18, the Petitioner found that it has purchased 13,998 number of Non-Solar REC less due to non- availability of Non-Solar REC and 41,569 number of Solar REC less due to stoppage of trade by Hon'ble Supreme Court order. Annexed hereto and marked as Annexure-"R" is a copy of IEX REC trade details.
29. The Petitioner submits that there are not sufficient quantity of Non- Solar REC available in the market, Solar REC are available in sufficient quantity. As per clause 5.1 of the Regulations, in the event of the obligated entity fulfilling the renewable purchase obligation by purchase of certificates, the obligation to purchase electricity from generation based on renewable energy other than solar can be fulfilled by purchase of non-solar certificates and the obligation to purchase electricity from generation based on solar as renewable energy source can be fulfilled by purchase of solar certificates only. If solar certificates are not available in a particular year, then in such cases, additional non-solar certificates shall be purchased for fulfilment of the RPO in accordance with Table 1. However, vice versa is not permitted, like in current scenario, Solar REC are available in the market but Obligated Entities cannot fulfil its Non-Solar RPO obligation through purchase of Solar REC.

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30. The Petitioner submits that the Hon'ble Supreme Court had suspended trading of Solar REC, and as Non-Solar REC were not available in the market, the Petitioner were not able to purchase required number of Solar and Non-solar REC and there was no RPO target set in for the FY 2017-18 by the Hon'ble Commission. The Petitioner submits that for the Financial Year 2017-18 RPO obligation, the Petitioner purchased the balance 13,998 number of Non Solar REC and 41,569 number of Solar REC in the month of April 2018 (on first trade itself).
31. In the abovementioned circumstances, the Petitioner is humbly requesting Hon'ble Commission to allow the Petitioner to roll over balance REC of the year 2017-18 to FY 2018-19 and to pass directions that REC purchased by the Petitioner in the month of April, 2018 be considered for balance shortfall of RPO obligation for the FY 2017-18.
32. The Petitioner respectfully submits to this Hon'ble Commission that availability of Non-Solar REC is concern as stated in para 24 and hence request Hon'ble Commission, on going forward, to allow the Petitioner to procure Solar REC in lieu of Non Solar REC considering that the prices of Solar and Non-Solar REC are similar.
33. The Petitioner respectfully submits that Gujarat Electricity Regulatory Commission (Procurement of Energy from Renewable Sources) (Second Amendment) Regulations, 2018 has allowed procurement of power from either sources in case non-availability of power from other sources. Clause 4 of the said Regulation reads as under:

**"4) Substitution of para 2 of Principal Regulation 4.1:**

*If the abovementioned minimum quantum of power purchase either from Solar or Wind or Others (including Biomass, Bagasse, Hydro and MSW) is not available in a particular year of FY 2017-18 to 2021-22, then in such cases, additional renewable energy available either from Solar or Wind or Others shall be utilised for fulfilment of RPO in accordance with Column 5."*

The Petitioner respectfully submits that, similar amendment is not made in proviso of Regulation 5.1, whereby it is permitted to procure Non-Solar REC when Solar RECS are not available in order to fulfil RPO.

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33A. It is to state that on 01.02.2019, the Ministry of Power (MoP) issued a clarification on applicability of RPO on Captive Power Plants, which reads as follows:-

- "1. ....
2. *The request of various stakeholders regarding capping of RPO for Captive Power Plants (CPP) has been examined in consultation with Ministry of New and Renewable Energy and it is clarified that RPO of the CPP may be pegged at the RPO level applicable in the year in which the CPP was commissioned. As and when the company adds to the capacity of the CPP, it will have to provide for additional RPO as obligated in the year in which new capacity is commissioned. There should not be an increase in RPO of CPP without any additional fossil fuel capacity being added.*"

Annexed hereto and marked as **Annexure "S"** is copy of the aforesaid clarification dated 01.02.2019 issued by the Ministry of Power.

33B. On 01<sup>st</sup> October, 2019, the Government of India through Ministry of Power issued further clarifications relating to Renewable Purchase Obligations. The letter dated 01<sup>st</sup> October, 2019 records as under:

"3. *Based on the concerns raised by various stakeholders and after due consultation with MNRE, CEA and CERC it is further clarified that:*

*(i) for CPPs commissioned before 1<sup>st</sup> April, 2016, RPO should be at the level as mandated by the appropriate Commission for the year 2015-16. For CPPs commissioned from 1<sup>st</sup> April, 2016 onwards, the RPO level as mandated by the appropriate commission or Ministry of Power, whichever is higher, for the year of commissioning of the CPP shall be applicable.*

*(ii) In case, of any augmentation in the capacity, the RPO for augmented capacity shall be the RPO applicable for the year in which the CPP has been augmented.*

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(iii) In case, for meeting the RPO obligations, CPP has surplus powers then its consumption requirements, such a CPP may sell its surplus power to Discoms under the prevailing arrangements or in the Power exchange.

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Annexed hereto and marked as Annexure-“T” is a copy of the letter dated 01.10.2019 of the Ministry of Power.

33C. The Petitioner submits that based on the aforesaid clarification dated 01.10.2019 of the MOP, the Odisha Electricity Regulatory Commission (hereinafter referred to as “OERC”) was pleased to issue Notification dated 31.12.2019 regarding capping of RPO. The OERC, in exercise of its power to remove difficulties was pleased to issue following directions:-

“ 3. Therefore, the Commission in exercise of its power to remove difficulties in implementing the Regulations under Regulations 12.6 of OERC (procurement of energy from renewable sources and its compliance) Regulations, 2015 hereby decides as follows:-

The CGPs which are commissioned before 01.04.2016, the RPO for them which are pegged as prescribed in the above Regulation for FY 2015-16 and shall be as follows:

<u>Solar source</u>	<u>Non Solar Sources</u>	<u>Total %</u>
0.50	2.50	3.00

For CGPs commissioned from 01.04.2016 onwards, the RPO shall be pegged at the level at the year of commissioning as mandated by the OERC under OERC (procurement of energy from renewable sources and its compliance) Regulation, 2015.”

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33D. The Petitioner submits that Rajasthan Electricity Regulatory Commission (hereinafter referred to as "RERC") to bring the Regulations in line with MOP clarifications considered it appropriate to modify the Regulations by way of making suitable amendments. RECR on 04.02.2020 was pleased to amend the Regulation 4 of the Rajasthan Electricity Regulatory Commission (Renewable Energy Obligation) (Sixth Amendment) Regulation 2020 in view of the clarificatory order dated 01.10.2019. The Applicant craves leave to produce the aforesaid orders of OERC and RERC during the hearing before the Hon'ble Commission, as and when required.

33E. It may be noted that the Hon'ble MERC in *Captive Power Producers Association (CPPA) Vs. Maharashtra Energy Development Authority (MEDA), Case No. 130 of 2020 Order dated 05.10.2020*, has held as under:

10. The Commission underscores that in its earlier Orders dated 27 March 2019 and 22 May 2019 in Case No. 36 of 2019 and 71 of 2019, respectively, it has asked to initiate the proceedings of RPO compliance by CPPs from FY 2014-15 to FY 2016-17 and to address the MoP's clarifications in those proceedings. However, due to various reasons such proceedings have not been initiated. **It is also a fact that RPO-REC Regulations 2016 have been challenged before the Hon'ble Bombay High Court by CPPA and the matter is still pending adjudication.**

.....

12. Therefore, in exercise of power under Regulation 19 of RPO-REC Regulations 2016, the Commission rules that the composite RPO targets for the CPPs commissioned before 1 April 2016 shall be 9% for the Operating Period of such Regulations, Provided that in case of any augmentation of the Captive Generating Plant, the RPO target for augmented capacity shall be equal to the RPO target applicable for the year in which such augmented capacity has been commissioned. For the Projects commissioned on or after 1 April 2016, the composite RPO

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target shall be equal to the target applicable for the year in which project is commissioned, for the Operating Period of RPO-REC Regulations 2016 onwards.

(relevant extract, emphasis added)

Hereto annexed and marked as **Annexure "U"** is the copy of the Order dated 06.10.2020 passed by the Hon'ble MERC in Case No. 130 of 2020.

33F. The Petitioner submits that as mentioned above, other State Regulatory Commissions have implemented the Ministry of Power's clarification with retrospective effect so as to cover the period prior to the current Regulations.

#### **PRAYERS**

34. In the aforementioned facts and circumstances, the Petitioner most humbly respectfully prays that:

- (a) that this Hon'ble Commission be pleased to pass appropriate directions that REC purchased by the Petitioner in the month of April, 2018, be considered for balance shortfall of RPO obligation for the FY 2017-18;
- (b) that this Hon'ble Commission be pleased to allow Petitioner to roll over balance RPO of the FY 2017-18 to FY 2018-19 or the FY in which this petition is disposed off, whichever is later;
- (c) that this Hon'ble Commission be pleased to allow the Petitioner to use Solar REC to meet its obligation for Non-Solar REC RPO and vice-versa for FY 2018-19;
- (c-1) Considering Government of India, Ministry of Power's circular dated 01.02.2019 and 01.10.2019 for capping of the RPO for captive power plants as per the Ministry of Power's Clarification orders and Draft Regulations to that effect published by GERC, it is requested to revise the RPO rate applicable for the CPPs in the Regulation 4 as per the GOI, Ministry

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of Power letter dated 01.10.2019 and the same is considered for present roll over request prayed in the captioned Petition;

(c-2) that this Hon'ble Commission be pleased to revise the RPO targets for the FY 2017-2018;

(d) any other order this Hon'ble Commission may deem fit in the matter.

**DECLARATION**

The subject matter of the Petition has not been raised by the Petitioner before any other competent forum, and that no other competent forum is currently seized of the matter or has passed any orders in relation thereto.

or, *Reliance Industries Ltd.*

*Aslam Bshel*  
*Authorised Signatory*

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**UNDERTAKING**

We, Advocates for Petitioner, have filed IA being IA no. 29 of 2022 before the Hon'ble Commission for seeking Amendment under the Para 33 and Para 34 of the Petition which has been allowed by Hon'ble Commission during the hearing of the matter on 25.09.2023 and vide Order dated 30.09.2023.

We undertake that all the other averments except the amendment under Para 33 and Para 34 of the Petition are as per the Original Petition.

For, Reliance Industries Ltd.

*Ashish B Shah*  
Authorised Signatory

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**BEFORE THE GUJARAT ELECTRICITY REGULATORY COMMISSION,  
GANDHINAGAR**

**PETITION NO. 1781 OF 2019**

IN THE MATTER OF :

Regulation 5 of Gujarat Electricity Regulatory Commission  
(Procurement of Energy from Renewable Sources)  
Regulations, 2010.

AND

Gujarat Electricity Regulatory Commission (Procurement of  
Energy from Renewable Sources) (First Amendment)  
Regulations, 2014.

AND

Gujarat Electricity Regulatory Commission (Procurement of  
Energy from Renewable Sources) (Second Amendment)  
Regulations, 2018.

AND

**IN THE MATTER OF:**

Reliance Industries Limited

...Petitioner

**AFFIDAVIT VERIFYING THE AMENDED PETITION**

I, Ashish Shah S/o Late Balchandra Shah, Adult, residing at Ahmedabad, do solemnly affirm and say as follows;

1. I am Senior General Manager of Reliance Industries Ltd., the Petitioner Company herein and I have read the Amended Petition pertaining to the above case and I am competent and duly authorized by the Petitioner Company to make this Affidavit to Amended Petition.
2. The Petitioner Company in compliance of the Order dated 30.09.2023 in IA no. 29 of 2022 passed by the Hon'ble Commission has carried the Amendment under the Para 33 and Para 34 of the Petition as allowed by Hon'ble Commission.

*Ashish*

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Solemnly affirmed at Ahmedabad on \_\_\_ day of October 2023, that the contents of the above Amended Petition are true to my knowledge and belief (as derived from the records) based on the information believed to be true and no part of it is false and nothing material has been concealed therefrom.

For, Reliance Industries Ltd.

Ashish B Shah  
Authorised Signatory

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SR.NO. 10683/2023  
SOLEMNLY AFFIRMED  
BEFORE ME

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D.H.SADHWANI NOTARY  
DATE 10-10-2023

INDETIFIED BY ME  
*(Signature)*  
ADVOCATE / CLERK

