

**BEFORE THE HON'BLE GUJARAT ELECTRICITY REGULATORY
COMMISSION AT GANDHINAGAR**
PETITION NO. OF 2024

IN THE MATTER OF:
Reliance Industries Limited

...PETITIONER

VERSUS

Gujarat Energy Development Agency

...RESPONDENT

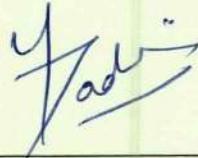
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Date: _____.11.2024
 Place: Ahmedabad

For, Gandhi Law Associates
 Advocates for Petitioner



**BEFORE THE HON'BLE GUJARAT ELECTRICITY REGULATORY
COMMISSION AT GANDHINAGAR**

PETITION NO. OF 2024

IN THE MATTER OF: **Regulations 4, 5 and 9.1 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

Gujarat Electricity Regulatory Commission
(Procurement of Energy from Renewable
Sources) (Third Amendment) Regulations,
2022.

AND IN THE MATTER OF:

Reliance Industries Limited
“Vraj”, Reliance Corporate House,
Near Vishv Umiyadham,
Umiya Dham Road,
Jaspur,
Ahmedabad-382721

...PETITIONER





MOST RESPECTFULLY SHOWETH:

Abstract of the Present Petition:

1. The present Petition is being filed by Reliance Industries Limited (hereinafter "**Petitioner/ RIL**"), which is a Company incorporated under the provisions of the Companies Act, 1956 and is engaged in the business of producing Petroleum and Petrochemicals products and have Captive Power Plants located in the State of Gujarat for the purpose of fulfilling the energy requirements of their industries through captively produced power.
2. It is submitted that the present Petition is preferred by the Petitioner seeking appropriate directions under Regulations 4, 5, as well as Proviso 5 and 6 of the Regulation 9.1 along with Regulation 12 of the Gujarat Electricity Regulatory Commission (Procurement of Energy from Renewable Sources) Regulations, 2010 (hereinafter "**GERC RPO Regulations, 2010**") to carry forward the compliance requirement of RPO for the FY 2023-24, on account of difficulty in complying with the Renewable Purchase Obligation ("**RPO**") for its plants located in the State of Gujarat, due to certain exigencies beyond the control of the Petitioner.
3. It is further submitted that the Electricity Act 2003 ("**EA 2003**"), under section 86(1)(e) mandates the State Commissions to promote generation of electricity from renewable sources of energy. The said provision directs the State Commissions to specify a percentage of the total consumption of electricity in the area of a distribution licensee, to be consumed from renewable energy sources.
4. Accordingly, keeping the aforesaid in view, this Hon'ble Commission on 16.04.2010 enacted the GERC RPO Regulations, 2010, wherein Regulation





4.1 provides the following norms to be fulfilled by obligated entities, such as distribution licensees, open access consumers and captive users:

“4. Quantum of Renewable Purchase Obligation (RPO)

4.1 Each distribution licensee shall purchase electricity (in kWh) from renewable energy sources, at a defined minimum percentage of the total consumption of its consumers including T&D losses during a year. Similarly, Captive and Open Access user(s) / consumer(s) shall purchase electricity (in kWh) from renewable energy sources, at a defined minimum percentage of his/her total consumption during a year.

The defined minimum percentages are given below in the Table I.

<i>Year</i>	<i>Minimum Quantum of purchase (in Vo) from renewable energy sources (in terms of energy in kWh)</i>			
<i>(1)</i>	<i>Total (2)</i>	<i>Wind (3)</i>	<i>Solar (4)</i>	<i>Biomass, Bagasse and Others (5)</i>
<i>2010-11</i>	<i>5%</i>	<i>4.5%</i>	<i>0.25%</i>	<i>0.25%</i>
<i>2011-12</i>	<i>6%</i>	<i>5.0%</i>	<i>0.5%</i>	<i>0.5%</i>
<i>2012-13</i>	<i>7%</i>	<i>5.5%</i>	<i>1.0%</i>	<i>0.5%</i>

...”

A copy of the GERC RPO Regulations, 2010 is annexed herewith and marked as **ANNEXURE P-1.**

5. Thereafter, this Hon'ble Commission on 03.03.2014 notified the “*Gujarat Electricity Regulatory Commission (Procurement of Energy from Renewable Sources) (First Amendment) Regulations, 2014*”, wherein the Table-I as provided in the principal regulation was substituted with the following:

“4) Substitution of Table I of Regulation 4.1 The table I provided in Principal Regulation 4.1 shall be substituted by following table 1

<i>Year</i>	<i>Minimum Quantum of purchase (in %) from renewable energy sources (in terms of energy in kWh)</i>			
	<i>Total</i>	<i>Wind</i>	<i>Solar</i>	<i>Others (Biomass, Bagasse, MSW, etc.)</i>
<i>2010-11</i>	<i>5.0</i>	<i>4.5</i>	<i>0.25</i>	<i>0.25</i>
<i>2011-12</i>	<i>6.0</i>	<i>5.0</i>	<i>0.5</i>	<i>0.5</i>
<i>2012-13</i>	<i>7.0</i>	<i>5.5</i>	<i>1.0</i>	<i>0.5</i>

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

..."

A copy of the Gujarat Electricity Regulatory Commission (Procurement of Energy from Renewable Sources) (First Amendment) Regulations, 2014 is annexed herewith and marked as **ANNEXURE P-2**.

6. Further, this Hon'ble Commission on 20.04.2018 once again notified the "Gujarat Electricity Regulatory Commission (Procurement of Energy from Renewable Sources) (Second Amendment) Regulations, 2018", wherein Table-I of the First Amendment was substituted by the following:

"3) Substitution of Table I of Regulation 4.1:

Table I 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	Total



	(%)	(%)	(Biomass, Bagasse, MSW and Hydro) (%)	(%)
(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.

....

A copy of the Gujarat Electricity Regulatory Commission (Procurement of Energy from Renewable Sources) (Second Amendment) Regulations, 2018 is annexed herewith and marked as **ANNEXURE P-3**.

7. In aide to the foregoing, this Hon'ble Commission, on 08.04.2022 notified the "Gujarat Electricity Regulatory Commission (Procurement of Energy from Renewable Sources) (Third Amendment) Regulations, 2022", wherein Table-II of the Second Amendment was substituted as follows:

"3) Substitution of Table II of Regulation 4.1:

Table II provided in the Gujarat Electricity Regulatory Commission (Procurement of Energy from Renewable Sources) (Second Amendment) Regulations, 2018 shall be substituted by following Table - II:

Table – II: Minimum percentage for Renewable Power Purchase Obligation

	<i>Minimum Quantum of purchase (in %) from renewable energy sources (in terms of energy in kWh)</i>
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Year	Wind (%)	Solar (%)	Hydro Power Purchase Obligation (HPO) (%)	Others (Biomass, Bagasse & Bio-fuel based cogeneration, MSW and Small/Mini/Micro Hydro) (%)	Total (%)
(1)	(2)	(3)	(4)	(5)	(6)
2017-18	7.75	1.75		0.50	10.00
2018-19	7.95	4.25		0.50	12.70
2019-20	8.05	5.50		0.75	14.30
2020-21	8.15	6.75		0.75	15.65
2021-22	8.25	8.00		0.75	17.00
2022-23	8.25	8.00		0.75	17.00
2023-24	8.40	9.50	0.05	0.75	18.70
2024-25	8.55	11.25	0.10	0.80	20.70

..."

A copy of the Gujarat Electricity Regulatory Commission (Procurement of Energy from Renewable Sources) (Third Amendment) Regulations, 2022 is annexed herewith and marked as **ANNEXURE P-4**.

8. Accordingly, the Petitioner was required to fulfil its RPO in terms of the percentages provided hereinabove. The status of compliance of RPO of petitioner For FY 23-24 is tabulated as follows.

FY 23-24	Generation (MWh)	RPO (MWh)		RE Power/Biomass Consumption (MWh)		Balance RPO (MWh)	
		Solar (2.75%)	Non-Solar	Solar	Non-Solar (Incl Biomass Cofiring)	Solar	Non-Solar
HMD	21,57,488	59,331	1,88,780	828	1,52,537	58,503	36,244
DMD	12,04,566	33,126	1,05,400	-	1,73,567	33,126	- 68,168

Notes:

- Assumption that the RPO % is based on MOP order dated 01.02.2019 on capping of RPO for CPPS pending final Regulation by GERC.





2. Excess generation from Biomass co-firing (Non Solar) at DMD is used to meet Solar RPO at DMD.
3. Further excess generation from biomass co-firing at DMD, after meeting its Solar and Non-Solar RPO is used to meet Non-Solar RPO at HMD.
4. Accordingly, balance to fulfil is as under:

FY 23-24	Balance RPO (MWh)		Balance RPO after Adjustment with excess Non-Solar RE power/Biomass consumption at DMD (MWh)	
	Solar	Non-Solar	Solar	Non-Solar
HMD	58,503	36,244	58503	1201
DMD	33,126	68,168	0	0

9. It is submitted that Sections 61(h) and 86(1)(e) of the EA, 2003 mandate that this Hon'ble Commission is required to take steps for promotion of renewable sources of energy. The said provisions mandate the above promotion irrespective of the source of renewable generation. The EA, 2003, along with promotion of renewable energy, also stipulates promotion of captive industry, as well as introducing competition for the end consumers in order to enable them availing electricity at competitive rates.
10. Considering the aforesaid, this Hon'ble Commission enacted the aforementioned Regulations. Through the present Petition, the Petitioner is seeking permission of this Hon'ble Commission to carry forward its RPO compliance of FY 2023-24 on account of various difficulties being faced by the Petitioner which are detailed hereinafter.



11. The brief facts leading to the filing of the present Petition are stated hereinunder:

BRIEF FACTS: -

12. The Petitioner/ RIL is engaged in the business of producing Petroleum and Petrochemicals and having coal based Captive Power Plants set-up in terms of Section 2(8) of the Electricity Act, 2003 situated in the State of Gujarat, viz. Hazira having an installed capacity of 360 MW and Dahej with an installed capacity of 270 MW along with CFBC Boilers to meet its power and steam requirements.

13. It is submitted that the EA 2003 was passed by the legislature with the objective to introduce competitive environment in the electricity sector and to take measures conducive to development of electricity industry and for promotion of environmentally benign policies.

In addition to the Electricity Act, the Central Government had undertaken various other exercises and initiatives towards promotion of renewable energy, which are discussed in detail herein below.

14. It is submitted that the EA 2003, under section 86(1)(e) mandates the State Commissions to promote generation of electricity from renewable sources of energy. The said provision directs the State Commissions to specify a percentage of the total consumption of electricity in the area of a distribution licensee, to be consumed from renewable energy sources.

15. Thereafter, in compliance with Section 3 of the Electricity Act, 2003, the Ministry of Power notified the National Electricity Policy on 12.02.2005, for

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development of power system based on optimal utilisation of resources such as coal, natural gas, nuclear substances or materials, hydro and renewable sources of energy. The said policy provided that the purchase obligations with respect to renewable consumption (as envisaged in section 86(1)(e) of the Electricity Act 2003) should be made applicable to the tariff determined by the various State Electricity Regulatory Commissions (SERCs) at the earliest and progressively such purchase obligations would be increased with increasing obligation for share of electricity from non-conventional sources.

A copy of the National Electricity Policy, 2005 is annexed herewith as
ANNEXURE P-5.

16. It is further submitted that the Ministry of Power, on 05.01.2006, notified the National Tariff Policy, to further the intent of the Electricity Act, 2003.

A copy of the National Tariff Policy, 2006 is annexed hereto and marked as
ANNEXURE P-6.

17. It is pertinent to mention herein that, due to uneven distribution of renewable energy sources across the country, which created hindrance for the Commissions to specify higher RPOs, the regime for Renewable Energy Certificates (“REC”) began with the aforementioned policy framework laid down by the Central Government.

18. It is further stated that in lieu of the above policies and plan of the Central Government, the Hon’ble Central Electricity Regulatory Commission (“**Ld. CERC**”) on 14.01.2010, notified the Central Electricity Regulatory Commission (Terms and Conditions for Recognition and Issuance of Renewable Energy Certificate for Renewable Energy Generation), Regulation





2010 (hereinafter “**CERC REC Regulations, 2010**”), wherein the said Commission came out with a mechanism for sale and purchase of RECs.

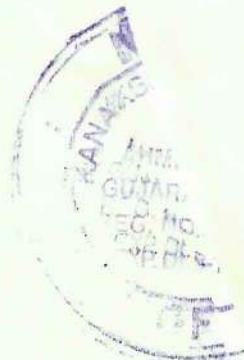
19. The said REC regime was adopted by the State Commissions by way of either amending their existing regulations or issuing fresh regulations to include the renewable energy certificate mechanism as a means for achieving/ meeting renewable purchase obligation by the distribution licensees and other obligated entities.

A copy of the CERC REC Regulations, 2010 is annexed herewith and marked as **ANNEXURE P-7**.

20. Accordingly, this Hon’ble Commission, in furtherance to above issued GERC RPO Regulations, 2010. The said Regulations provided for RPO norms to be fulfilled by obligated entities in a distribution licensee, as part of their total power procurement. In this regard, the relevant Regulations are Regulations 4, 5, 9 and 12.

21. It is submitted that during the year 2011, the Petitioner preferred a Special Civil Application being SCA No. 791 of 2011, challenging the GERC RPO Regulations, 2010, *inter alia* on the basis that inclusion of all captive users of electricity including those producing electricity through ‘cogeneration’ within the “obligated entity” is against section 86(1)(e) of the EA 2003, as also interpreted by various judgements of Hon’ble APTEL, dated 01.10.2014 passed in Appeal Nos. 112 of 2014 & batch titled as India Glycols Limited v. UERC & Ors., 26.04.2010 passed in Appeal No. 57 of 2009 titled as Century Rayon v. MERC & Ors. and 02.12.2013 passed in Appeal No. 53 of 2012 titled as Lloyds Metal & Energy Ltd. v. MERC & Ors. It is the case of the Petitioner that the aforesaid has resulted in a situation whereby far from putting the co-





generators on par with renewable sources of energy, the GERC RPO Regulations put them at a significant disadvantage, by putting an additional burden on cogeneration power plants to also fulfil RPO at a higher cost and without there being any requirement for such power. However, the Hon'ble High Court of Gujarat, vide an order dated 12.03.2015 dismissed the said Special Civil Application filed by the Petitioner.

A copy of the order dated 12.03.2015 passed by the Hon'ble High Court of Gujarat in SCA No. 791 of 2011 is annexed herewith and marked as **ANNEXURE P-8.**

22. Thereafter, being aggrieved by the aforesaid order passed by the Hon'ble High Court, the Petitioner filed a Letters Patent Appeal being LPA No. 847 of 2015. Vide the said appeal, the Petitioner also preferred a stay Application, thereby seeking stay of the order dated 12.03.2015 passed in SCA No. 791 of 2011. However, on 05.05.2015, the Hon'ble High Court disposed of the said Stay Application, thereby holding as follows:

“I.

*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.”*

A copy of the order dated 05.05.2015 passed by the Hon'ble High Court of Gujarat is annexed herewith and marked as **ANNEXURE P-9.**

23. In the meanwhile, while GERC RPO Regulations are in force, the MOP issued a notification dated 01.02.2019 providing that the RPO norms for captive users consuming powers from their CGPs, be capped at the RPO levels existing at





the time of commissioning of the said CGPs. The relevant extract of the said notification is reproduced hereinbelow:

"The request of various stakeholders regarding capping of RPO for Captive Power Plants (CPP) has been examined in consultation with Ministry of 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 the additional RPO as obligated in the year in which new capacity is commissioned. There should not be an increase in RPO without any additional fossil fuel capacity being added."

24. The need for issuance of the above notification was the fact that increasing RPO trajectory on a year-to-year basis is adversely burdening the industries with costs thereby making their functioning onerous leading to the said industries becoming less competitive in their respective goods markets, when the purpose of CGPs was to lower the cost of production of industrial goods.

A copy of the notification dated 01.02.2019 issued by the Ministry of Power, Government of India, is annexed hereto and marked as **ANNEXURE P-10**.

25. Further, MNRE on 26.04.2019 issued a notification whereby, MNRE expressed support to the notification issued by the MOP on 01.02.2019. The relevant extract of the said Notification, is set out hereinbelow:

"3. It may further be mentioned that CPPs have been importing/ exporting electricity from/ to the grid, as per the requirement and cost- comparative considerations. Under the RPO, the CPPs will have to either buy or generate renewable power according to the RPO for particular year. Increasing RPO trajectory will necessitate either increasing power export to the grid, cutting down import from grid. As such, under the prevailing renewables costs and trends thereof, increasing RPO trajectory may not put CPPs in financially disadvantageous position across the CPP landscape. However, increasing RPO may be disadvantageous to certain categories of CPPs (say CPPs in Aluminium industry) on technical grounds.



In view of the above, it is suggested that the Ministry of Power may consider issuing clarification order in supersession to the order referred to in Paragraph 1.0 above of the 1 February 2019. The clarification order may propose that while considering RPOs for CPPs, the SERCs may permit deviation from the RFC trajectory as notified by the Ministry Power only in the cases where: i) Achieving RPO trajectory will put the industry deploying CPP in a financially disadvantageous position; or ii) increasing renewable power consumption is not technically feasible for operations of the industry deploying CPPs. The above may act as guiding principle for SERCs in determining applicability of RPOs for CPPs. ”

A copy of the Notification dated 26.04.2019 issued by MNRE is annexed herewith and marked as **ANNEXURE P-11.**

26. Subsequently, the MOP issued another notification dated 01.10.2019, whereby the earlier notification dated 01.02.2019 was further clarified by setting as follows:

“...

i) For CPPs that have commissioned before 01.04.2016, RPO should be at the level as mandated by the appropriate Commission for the year 2015-16. For CPPs commissioned from 1.04.2016 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.”

A copy of the notification dated 01.10.2019 issued by the Ministry of power is annexed hereto and marked as **ANNEXURE P-12.**

27. Considering the aforesaid notifications issued by the MOP, this Hon'ble Commission on 17.07.2020 issued the Draft Gujarat Electricity Regulatory Commission (Procurement of Energy from Renewable Sources) (Third Amendment) Regulations, 2020. Vide the said draft amendment, this Hon'ble Commission proposed to give effect to the aforementioned Notification dated 01.10.2019 issued by MOP. The relevant portion of the draft amendment is set-out hereinbelow:



"Amendment in Regulation 4.1 of the Principal Regulations to be read with First and Second Amendments:

Para 1 and 2 of Principal Regulation 4.1 read with First and Second Amendments shall be substituted as under:

Para: 1

Each distribution licensee shall purchase electricity (in kWh) from renewable energy sources, at a defined minimum percentage of the total consumption of its consumers including T&D losses, excluding consumption met from hydro sources of power other than mini hydel sources of power during the year. Similarly, Captive and Open Access user(s) / consumer(s) shall purchase electricity (in kWh) from renewable energy sources, at a defined minimum percentage of his/her total consumption, excluding consumption met from hydro sources of power other than mini hydel sources of power during the year.

Provided that in case of Captive User of a Captive Generating Plant commissioned before 1st April, 2016, the composite RPO target with respect to the energy procured from such Captive Generating Plant shall be as decided by the Commission for the Year 2015-16;

Provided further that in case of Captive Generating Plant commissioned on or after 1st April, 2016, the composite RPO target shall be equal to the target applicable for the year in which project is commissioned;

Provided further 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;"

A copy of the Draft Regulations dated 17.07.2020 is annexed herewith and marked as **ANNEXURE P-13.**

28. It is pertinent to state that the aforesaid draft amendments issued by this Hon'ble Commission were never notified. In this regard, certain petitions filed before this Hon'ble Commission are also pending adjudication, which seek implementation of the aforesaid MOP Notifications with respect to amendment of GERC RPO Regulations. Till the time of implementation of above MOP

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notification by this commission, the Renewable Purchase Obligation of Captive User of a Captive Generating Plant is very difficult to crystallise.

29. The Hon'ble Central Electricity Regulatory Commission issued the Central Electricity Regulatory Commission (Terms and Conditions for Renewable Energy Certificates for Renewable Energy Generation) Regulations, 2022 on 09.05.2022 which has been made effective from 05.12.2022.

A copy of the Central Electricity Regulatory Commission (Terms and Conditions for Renewable Energy Certificates for Renewable Energy Generation) Regulations, 2022 on 09.05.2022 is annexed herewith and marked as **ANNEXURE P-14**.

30. The Ld. CERC, vide an Order dated 17.10.2021 in Petition No.146/MP/2021 provided approval for introduction of the Green Day Ahead Market (“**G-DAM**”) Contract in Day Ahead Market segment at Indian Energy Exchange Limited. The platform provides additional avenue to existing and prospective Renewable Energy (RE) generators for sale of RE through Power Exchange and to provide more options to the Obligated Entities to fulfil their RPO. However, the G-DAM platform have a difficulty for buyers who wish to fulfil RPO through G-DAM:

- a. Under G-DAM segment at Power Exchange, Buyer need to bid in composite Bid in MWh. There is no option to bid for separate Solar or Non-Solar or any other source specific Renewable Power.
- b. The cleared volume is composite power (Solar and Non-Solar). Buyer will come to know the exact segregated quantum of Solar and Non-Solar RE power only after 2-3 days of Trading Day once the Power exchange issues the RE purchase certificates.





- c. It is not possible for an Obligated entity to procure Renewable Energy from the power exchange to meet exact Solar and Non-Solar RPO and the Obligated Entity may end up buying excess Solar/Non-Solar Power even after bidding the exact required RPO quantum.
- d. This will cause irreparable damage to Obligated Entities as the RE Power, once procured cannot be resold or transferred or used for any other purpose other than for fulfilling RPO.

A copy CERC Order dated 17.10.2021 in Petition No.146/MP/2021 for approval for introduction of the Green Day Ahead Market (G-DAM) Contract in Day Ahead Market segment at Indian Energy Exchange Limited is marked as **ANNEXURE P-15**.

31. MNRE has issued policy direction on 26.09.2019 clarifying that the biomass consumed under co-firing with coal will be considered as renewable energy and such renewable energy, to the extent of generated from biomass consumption shall be counted to meet the non-solar RPO. Copy of MNRE order dated 26.09.2019 is annexed herewith and marked as **ANNEXURE P-16**.

a) Based on MNRE order, CERC passed suo-motu order dated 18.02.2020 whereby detailed methodology is prescribed to arrive at energy consumption through biomass co-firing. Copy of the CERC order dated 18.02.2020 is annexed herewith and marked as **ANNEXURE P-17**

b) Based on MNRE and CERC order, the Petitioner had approached GEDA for implementation of CERC methodology in Gujarat vide letter dated 02.02.2021. Copy of the letter dated 02.02.2021 is annexed herewith and marked as **ANNEXURE P- 18**

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c) The petitioner was requested to file a petition for implementation of CERC methodology to determine quantum of biomass energy consumed in biomass co-firing plant.

d) Accordingly, Petitioner has filed a separate petition No 2012 of 2021 before this Hon'ble Commission. The Petitioner invited comments/suggestions/objection on this petition by publishing details in various newspapers on and providing copy of the petition on its web site. This petition is pending for hearing.

e) Petitioner has coal-based power plant and the Petitioner is using the biomass co-firing to meet its RPO.

f) Petitioner is regularly submitting generation data of power generated through biomass co-firing to the nodal agency viz Gujarat Energy Development Authority (GEDA)

32. It is further submitted that due to the criticality of the operations of the Petitioner's plants, supply of reliable and continuous power and steam is very essential and hence the requirement of power and steam is met by captive generation. On account of the same, there is limited possibility to consume the renewable energy which is infirm in nature. It is further important to note herein that the Petitioner has filed similar Petitions being Petition No. 1781 of 2019 for FY 2017-18; Petition No. 1792 of 2019 for FY 2018-19; Petition No. 1892 of 2020 for FY 2019-20; Petition no 2007 of 2021 for FY 2020-21; Petition no 2160 of 2022 for FY 2021-22 ;and Petition no. 2245 of 2023 for FY 2022-23 before this Hon'ble Commission seeking appropriate directions for carrying forward of RPO compliance for the FY 2017-18 and FY 2018-19





and FY 2019-20 and FY 2020-21 and FY 2021-22 and FY 2022-23. The said Petitions are pending adjudication before this Hon'ble Commission.

33. In view of the aforesaid, the Petitioner seeks invocation of provisos 5 and 6 of the Regulation 9.1 of the GERC RPO Regulations, 2010, which provides as follows:

“9. Consequences of default

...

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.”

34. In addition to the aforesaid, the Petitioner also seeks invocation of Regulation 12 of the GERC RPO Regulations, 2010, which provides as follows:

“12. Power to remove difficulties.

12.1 The Commission shall suo motu or on an application from any person generating electricity from renewable energy sources or a distribution licensee or captive user or open access consumer may review, add, amend or alter these Regulations and pass appropriate orders to remove any difficulty in exercising the provisions of these Regulations.”

35. The above regulations contain the power to carry forward of RPO targets to the next FY, including the power to remove difficulties, in the event the obligated entity is facing genuine difficulty to comply with the RPO norms. In the present case the Petitioner has faced unavoidable difficulties in complying with the RPO target required under the applicable RPO regulations for the FY

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2023-24 and as such, is seeking appropriate directions upon this Hon'ble Commission to carry forward its RPO targets to the next FY.

36. It is submitted that Section 86(1)(e) of the EA 2003 specifies promotion of renewable sources of energy, and that there is no specific mandate to have rigid technology specific RPO norms. The intent of the said provision is to promote renewable sources of energy, irrespective of their nature or source of generation.

37. Therefore, keeping the aforesaid facts and circumstances at hand, the Petitioner is filing the present Petition seeking carry forward of its RPO compliance for the FY 2023-24.

GROUND:

The present petition is preferred on the following amongst other grounds, for proper adjudication, and the same are as follows:

I. Regulatory Framework:

A. For that the EA 2003, under section 86(1)(e) mandates the State Commissions to promote generation of electricity from renewable sources of energy. The said provision directs the State Commissions to specify a percentage of the total consumption of electricity in the area of a distribution licensee, to be consumed from renewable energy sources. Accordingly, to enforce Section 86(1)(e), this Hon'ble Commission enacted the GERC RPO Regulations, 2010, which were subsequently modified by first, second and third amendments. The said Regulations under Regulation 4 read with amendments provided the norms for fulfilment of RPOs by various obligated entities, including those entities which are procuring power through their captive generating plants.

B. For that, the aforesaid RPO Regulation, 2010 read with amendments under Proviso 5 and 6 of the Regulation 9 contain the power to carry forward of RPO targets to the next FY, including the power to remove difficulties, in the event the obligated entity is facing genuine difficulty to comply with the RPO norms.

C. For that it is pertinent to submit that Section 86(1)(e) of the EA 2003 specifies promotion of renewable sources of energy, and that there is no specific mandate to have rigid technology specific RPO norms. The intent of the said provision is to promote renewable sources of energy, irrespective of their nature or source of generation. As such, Regulation 4.1 and Regulation 5.1 provides for interchangeability of solar and non-solar RECs and physical energy, in the event there is genuine difficulty in procuring either RECs or physical energy in the market, for enabling the obligated entities to comply with their RPO targets.

D. For that in the present case the Petitioner has faced unavoidable difficulties in complying with the RPO targets required under the applicable RPO regulations for the FY 2023-24 (as detailed hereinafter) and as such, is seeking appropriate directions upon this Hon'ble Commission to carry forward its RPO.

II. Reasons for seeking carry forward of RPO:

E. It is important to highlight herein that, as per clause 5.1 of the GERC RPO Regulations, 2010, 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 norms. The relevant portion of the aforesaid regulations is reproduced hereinbelow for the convenience of this Hon'ble Commission:

"5. Certificates under the Regulations of the Central Commission

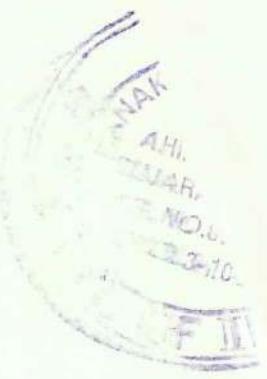
5.1 Subject to the terms and conditions contained in these Regulations, the Certificates issued under the Central Electricity Regulatory Commission's (Terms and Conditions for recognition and issuance of Renewable Energy Certificate for Renewable Energy Generation) Regulations, 2010 shall be the valid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

Provided that 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 I."

As such, considering the provisions of RPO Regulation 5.1, the Petitioner ought to be permitted to comply with its RPO norms by setting off the solar certificates with either of the other RE certificates, in other words the regulation provides for interchangeability of Solar and Non-Solar renewable power/ RECs for the purpose of fulfilment of RPO norms.

F. For that, this Hon'ble Commission ought to consider the fact that the RPO regime needs to be relaxed in terms of the fact that Section 86(1)(e) does not envisage rigid technology specific RPO norms which are onerous and act as

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a hindrance for the captive and open access industry. As such, while it is necessary to promote renewable energy, however, at the same time, it should not pose hindrance for the captive consumption.

G. For that, Articles 5.2.24 and 5.2.25 of National Electricity Policy (NEP) [which has been formulated under Section 3(1) of the Electricity Act 2003] provide for the establishment of CGP's as a means of securing reliable, quality and cost-effective power. Relevant portion of the National Electricity Policy, 2005 is being reproduced herein for ready reference of this Hon'ble Commission:

“Captive Generation

5.2.24 The liberal provision in the Electricity Act, 2003 with respect to setting up of captive power plant has been made with a view to not only securing reliable, quality and cost-effective power but also to facilitate creation of employment opportunities through speedy and efficient growth of industry.

5.2.25 The provision relating to captive power plants to be set up by group of consumers is primarily aimed at enabling small and medium industries or other consumers that may not individually be in a position to set up plant of optimal size in a cost-effective manner. It needs to be noted that efficient expansion of small and medium industries across the country would lead to creation of enormous employment opportunities.”

H. For that, the provision of the National Tariff Policy, 2016, provides as follows:

“6.4 Renewable sources of energy generation including Co-generation from renewable energy sources:

Pursuant to the provisions of Section 86(1)(e) of the Act, the Appropriate Commission shall fix a minimum percentage of the total consumption of electricity in the area of distribution licensee for purchase of energy from renewable energy sources, taking into account availability of such resources and its impact on retail tariff...

....

(iii) It is desirable that purchase of energy from renewable sources of energy takes place more or less in the same proportion in different States. To achieve this objective in the current scenario of large availability of such resources only in certain parts of the country, an appropriate mechanism such as Renewable Energy Certificate (REC) would need to be promoted.

....

(Underline Supplied)

From the aforesaid reading of Clause 6.4 (1), the Hon'ble Commission while fixing the renewable purchase obligation under Section 86(1)(e) of the EA 2003, must take in to account the following:

- (a) availability of such resources and.
- (b) its impact on consumer tariff.

As such, the impact of fulfilment of RPO on the landed cost of electricity upon obligated entities including captive users, is required to be considered so that the same is not onerous.

A copy of the National Tariff Policy, 2016 is annexed herewith and marked as **ANNEXURE P-19**.

- I. The Hon'ble Commission ought to ensure the survival of the captive industry(ies), as this ever-growing liability of REC compliance is eating away all profits of this industry and if the same are not done away, then such industry(ies) would not be in a position to survive, which will not only affect the overall revenue of the State, but also would result in a huge number of people becoming unemployed.
- J. The Hon'ble CERC, in its "Record of Proceedings" for hearing dated 15.12.2022, on Petition No. 375/MP/2022 filed by Indian Energy Exchange (IEX) with respect to the REC trading session to be held on 28.12.2022 and

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onwards, inter-alia directed that following process to be followed for the REC trading session at IEX platform from 28.12.2022 onwards till further communication:

- i. Solar and Non-Solar REC contract will be de-activated for December 2022 trading and onwards. However, as per Regulation 19(2)(c) of REC Regulations 2022, existing REC contract for Non -Solar RECs issued prior to 01.04.2017 will remain available for the trading till further directions of the Hon'ble Supreme Court/Hon'ble Commission.
- ii. A new contract named "REC" will be available for placing the orders on IEX Platform for Buyer and Sellers. All participants will need to place their orders in new REC symbol "REC" for purchase or sell Bids.
- iii. There will be no Floor and Forbearance price range applicable for REC Contract.
- iv. Bids accumulated in REC contract during the trading session will be matched and Price / Volume will be discovered as per existing matching methodology.
- v. Buyers will have an option to give their preference quantities in SOLAR & NON-SOLAR type within stipulated time before start of trade.
- vi. In case the cleared quantity in the auction is lesser than the bid quantity placed by a buyer then the allocation of Solar and Non-Solar RECs shall be based on the ratio of respective preference quantity provided by buyer.
- vii. In case the cumulative preference for a particular REC type is less than the cleared RECs in that type then the complete allocation will be made



as per the preference. In case the preference for a particular REC type is more than cleared RECs in that type then pro-rata methodology will be followed for the allocation.

viii. In case the buyer has not given any preference then allocation will be done based on whatever REC types is available after allocating it on preference basis. However, bifurcation of allocated quantity with respect to source of origin will be mentioned in Buyer Certificate.

ix. Example of allocation as per new process:

Scenario	Buy Bid	Requirement of Buyer		Total REC Cleared	Available REC		Final Allocation	
		Solar	Non-Solar		Solar	Non-Solar	Solar	Non-Solar
Scenario 1	1000	1000		800	500	300	500	300
Scenario 2	2000		2000	1500	500	1000	500	1000
Scenario 3	2000	1200	800	1000	500	500	500	500
Scenario 4	3000	NA	NA	2000	500	1500	500	1500

K. Based on the above facts, it is evident that in spite the buyers' preference is only for Solar REC (Scenario 1), final allocation may be a mix of Solar and Non-Solar REC.

L. Although, after trading, the Central Agency will issue REC certificates, based on source of origin, such as Solar/Non-solar, the buyer may not get the requisite quantity of Solar and Non-Solar RECs, although buyer may get total quantity of RECs. Based on this method of REC trading and REC allocation post trading, the buyer may not be able to fulfil the RPO as per

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Solar and Non-Solar bifurcation, though overall RPO may be met. Hence, it will be difficult to fulfil source specific RPO (Solar/non-Solar) as required under GERC (Procurement of Energy from Renewable Sources) Regulations 2010 and its amendment.

M. The Petitioner is using Biomass cofiring to meet its RPO. The Petitioner had planned to meet its entire RPO by consumption of Biomass during FY2023-24. However, due to non-availability of requisite quantity of Biomass during FY 2023-24, the Petitioner was not able to fulfil its entire RPO through Biomass co-firing.

N. UPSHOT OF THE ABOVE:

- a. Though, the Central Agency would issue REC certificates based on the source /of origin, i.e., Solar/ Non-solar, however, trading would be done under the term “REC” without any differentiation between Solar/ Non-solar.
- b. The unwarranted corollary which would follow is that an obligated entity (the Petitioner in the present case) would never be in a position to accurately gauge the quantum of Solar or Non-solar RECs which shall be allocated post a trading session.
- c. Hence, it will pose grave challenge and difficulty to fulfil source specific RPO i.e., Solar/ Non-Solar, in terms of the mandate under the extant RPO Regulations of this Hon’ble Commission.
- d. The said difficulty was intimated to this Hon’ble Commission vide a letter dated 24th March 2023, requesting the Hon’ble Commission to initiate necessary action and issue requisite clarification and allow full fungibility between Solar and Non-Solar.

The copy of the letter dated 24.03.2023 to this Hon'ble Commission, is enclosed in **Annexure P-20**

O. Difficulty in procuring RE from G-DAM by buyers for fulfilment of RPO

Obligated Entity cannot procure source specific (Solar, Wind, Biomass etc) RE through G-DAM. The RE is procured through composite bid in MWh. The Power exchange will issue certificate (Solar, Non-Solar) to RE buyer through G-DAM once the trading and delivery of power is completed.

The obligated entity cannot consume requisite quantum of Solar and Non-Solar RE through G-DAM and if RE is procured under G-DAM, the Obligated Entity may end up procuring excess RE of particular source (Solar or Non-Solar).

P. Difficulty in Buying G-DAM power in the state of Gujarat: - Any Consumer willing to buy power from G-DAM/DAM from Power exchange is required to submit an undertaking to host Discom stating that they will procure the power on RTC and Uniform basis. Since, RE power is infirm in nature and can't be available throughout, it is difficult to procure the RE power from Power exchange on RTC and Uniform Basis.

The Petitioners subsidiary company - M/s Sintex industries Ltd. (Consumer) have procured G-DAM Power from Power exchange in Aug-23 to fulfil their RPO. However, power cleared at Power exchange was not uniform and RTC Basis. Stating this reason, PGVCL (Discom) have not given any credit settlement against these Units to Consumer in monthly Electricity Bill even after producing all the Required State energy account report from SLDC And IEX certificate of G-DAM Power. This is clear evident that Obligated entity is



at loss by buying green power from G-DAM. The copy of the letter submitted to PGVCL is annexed at **Annexure P-21**.

Q. Capping of RPO for captive power users

a) The Ministry of Power has issued order dated 01.02.2019 whereby RPO on captive generating plant is capped. Relevant provision of Ministry of Power's order is reproduced below:

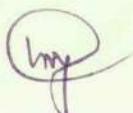
b) *"The request of various stakeholders regarding capping of RPO for Captive Power Plants (CPP) has been examined in consultation with Ministry of Renewable Energy and it is clarified that RPO of the CPP may be pegged at the RPO level applicable in the year in which the CPP was commissioned. As and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

c) Many States Electricity Regulatory Commissions (SERCs), RERC, PSERC, OERC, UPERC have implemented the said order dated 01.02.2019 and 01.10.2019 issued by the Ministry of Power to cap RPO on captive users.

d) The said orders of Ministry of Power are yet to be implemented by the Hon'ble Commission in Gujarat, pending which it is difficult to crystalise the RPO of captive user.

R. Biomass co-firing for fulfilment of RPO

a) The MNRE has issued order dated 26.09.2019 whereby bio mass consumption in biomass co-firing is recognized as Renewable Energy and can be used to meet non-solar RPO of Obligate Entities. Based on the said MNRE order, the CERC has issued detailed methodology of



calculating the biomass energy in biomass co-firing plant vide suo-motu order dated 18.02.2020.

- b) The Petitioner's coal-based plants are fully equipped to consume biomass through biomass co-firing. The Petitioner is maximising consumption of Biomass in its coal-based power plants.
- c) The Petitioner has filed a separate petition No 2012 of 2021 with Hon'ble Commission to consider CERC methodology on biomass co-firing, the same is yet to be taken up for hearing.

S. For that, it is the case of the Petitioner that the co-generation power plants ought not be fastened with the RPO liability, to the extent of electricity generated through co-generation, in light of Section 86(1)(e) of the EA 2003 as both co-generation and renewable generation are to be treated at par and both have to be promoted. In this regard, the Petitioner reiterates its stand that since the matter relating to RPO on co-generation captive plants is pending adjudication before the Hon'ble Gujarat High Court, the Petitioner in the meantime has been meeting its RPO Compliance for its coal based thermal power plants at its Hazira and Dahej Plants through biomass co-firing and by procuring RECs from the exchange.

T. For that, in the present circumstances, taking aide of the above Clauses of the various National Policies, this Hon'ble Commission shall contribute into creating an enabling and conducive environment if the relief as sought for are granted in favour of the Petitioner. It shall also preserve and add to the legislative harmony envisioned between promotion of renewable sources of energy and creating an enabling environment which promotes harnessing of Captive Generation of power.

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U. For that, in view of the aforementioned facts and circumstances, this Hon'ble Commission ought to allow carry forward of RPO for FY 2023-24 within one year from the date of this Hon'ble Commission's order and also be pleased to pass appropriate orders in Petition No. 1781 of 2019 for FY 2017-18; Petition No. 1792 of 2019 for FY 2018-19 Petition No. 1892 for FY 2019-20 Petition No. 2007 of 2021 for FY 2020-21, Petition no 2160 of 2022; and Petition No.2245 of 2023 for FY 2022-23 which are pending adjudication before this Hon'ble Commission.

V. For that, if the prayer(s) as prayed for is not granted by this Hon'ble Commission then the same shall cause the Petitioner irreparable loss, injury and travesty of justice.

W. That, the present Petition is made *bona fide* and in the interest of justice.

X. The Petitioner craves leave of this Hon'ble Commission to raise any other further points/ grounds at the time of hearing of the Petition or at any time thereafter with its permission.

PRAYER

In view of the detailed facts and submissions made hereinabove, the Petitioner most humbly prays that this Hon'ble Commission may graciously be pleased to:

- a) To admit and allow the present Petition;
- b) Pass appropriate orders/ directions under Provisos 5 and 6 of Regulation 9.1 of the Gujarat Electricity Regulatory Commission (Procurement of Energy from Renewable Sources) Regulations, 2010, amended from time to time, thereby permitting the Petitioner

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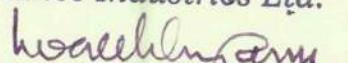




to carry forward its RPO liability for FY 2023-24 within one year from the date which the Hon'ble Commission decides;

- c) That the RPO compliance may be allowed at the entity level instead of unit level.
- d) That this Hon'ble Commission be pleased to revise the RPO targets for the FY 2023-24.
- e) Pass appropriate directions/ orders under Regulations 4.1, 5.1 and 12 of the GERC RPO Regulations, 2010, thereby removing difficulties in permitting the Petitioner to fulfil its RPO liability through interchangeability, i.e., by allowing Petitioner to fulfil its entire RPO by Biomass co-firing and by allowing fulfilment of solar RPO through purchase of non-solar renewable energy/ RECs, and vice-versa at entity level;
- f) Allow RPO levels for Captive User of a Captive Generating Plant in line with the MOP notification dated 01.02.2019 and 01.10.2019.
- g) Pass any other and further order or orders as this Hon'ble Commission may most graciously deem fit and proper under the peculiar facts and circumstances of the present case and in the interest of justice.

For, Reliance Industries Ltd.



Authorised Signatory

Date: 28.11.2024

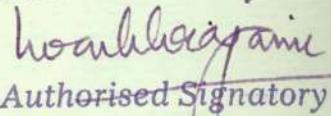
Place: Ahmedabad

Reliance Industries Limited

(Petitioner)

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.

For, Reliance Industries Ltd.


Anil Ambani
Authorised Signatory

Place: Ahmedabad

Date: 28.11.2024

Reliance Industries Limited

Petitioner



**BEFORE THE HON'BLE GUJARAT ELECTRICITY REGULATORY
COMMISSION AT GANDHINAGAR**

PETITION NO. OF 2024

Reliance Industries Limited

...PETITIONER

VERSUS

Gujarat Energy Development Agency

...RESPONDENT

AFFIDAVIT

I, Vishvesh Vachchrajani s/o. Vyomesh Vachchrajani age 54 years, residing at Ahmedabad do solemnly affirm and say as follows:

1. That I am working as Senior Vice President – Corporate Affairs, with the Petitioner Reliance Industries Limited herein and I have read the present Petition and I am competent and duly authorized by the Petitioner Company to file the Petition.
2. That the contents of the Petition being filed by the Petitioner Company are based on information available with the Petitioner Company and believed by me to be true.

Solemnly affirmed at Ahmedabad on this 28th day of November, 2024.

For, Reliance Industries Ltd.
kanaksinh *DEPONENT*
Authorised Signatory

VERIFICATION:

I, the Deponent abovenamed, do hereby verify the contents of the above affidavit to be true to the best of my knowledge, no part of it is false and nothing material has been concealed there from.

Verified at Ahmedabad on this 28th day of November, 2024.

— 20945 — /2024
 SR. No.
 SOLEMNLY AFFIRMED
 BEFORE ME
1111 WMS
 KANAKSINH K. VAGHELA, NOTARY
 DATE *28/11/2024*

For, Reliance Industries Ltd.
kanaksinh *Authorised Signatory*
DEPONENT

IDENTIFIED BY ME
ADVOCATE

(C)



The Gujarat Government Gazette

EXTRAORDINARY

PUBLISHED BY AUTHORITY

Vol. LI]

WEDNESDAY, MAY 26, 2010/JYAISTHA 5, 1932

Separate paging is given to this Part in order that it may be filed as a Separate Compilation.

PART IV-C

Statutory Rules and Orders (Other than those published in Parts I, I-A and I-L) made by Statutory Authorities other than the Government of Gujarat including those made by the Government of India, the High Courts, the Director of Municipalities, the Commissioner of Police, the Director of Prohibition and Excise, the District Magistrates and the Election Commission, Election Tribunals, Returning Officers and other authorities under the Election Commission.

GUJARAT ELECTRICITY REGULATORY COMMISSION (GERC)

Procurement of Energy from Renewable Sources

Notification No. 3 of 2010

In exercise of the powers conferred under sections 61, 66, 86 (1)(e) and 181 of the Electricity Act 2003 (36 of 2003) and all powers enabling it in that behalf, Gujarat Electricity Regulatory Commission hereby makes the following Regulations for promoting the sale of power from renewable energy sources to any person and for procurement of energy from renewable sources by distribution licensee within the State of Gujarat.

1. Short Title, Extent and Commencement

- These Regulations shall be called the Gujarat Electricity Regulatory Commission (Procurement of Energy from Renewable Sources) Regulations, 2010.
- These Regulations extend to the whole of the State of Gujarat.
- These Regulations, excluding clause 8 shall come into force on the date of their publication in the Gazette.
- Clause 8 of these Regulations shall come into force from a date to be notified by the Commission separately.

2. Definitions and Interpretation

2.1 In these Regulations, unless the context otherwise requires –

- 'Act' means the Electricity Act, 2003 (Act 36 of 2003);
- 'Area of Supply' means the area within which a distribution licensee is authorized to supply electricity;
- 'Central Agency' means the agency operating the National Load Dispatch Centre or such other agency as the Central Commission may designate from time to time;

- (d) 'Central Commission' means the Central Electricity Regulatory Commission referred to in sub-section (1) of section 76 of the Act;
- (e) 'Certificate' means the renewable energy certificate issued by the Central Agency in accordance with the procedures laid down by it and under the provisions specified in the Central Electricity Regulatory Commission (Terms and Conditions for recognition and issuance of Renewable Energy Certificate for Renewable Energy Generation) Regulations, 2010;
- (f) 'Commission' means Gujarat Electricity Regulatory Commission;
- (g) 'Distribution Licensee' means a licensee authorized to operate and maintain a distribution system for supplying electricity to the consumers in his area of supply;
- (h) 'Floor price' means the minimum price as determined by the Central Electricity Regulatory Commission in accordance with its (Terms and Conditions for recognition and issuance of Renewable Energy Certificate for Renewable Energy Generation) Regulations, 2010 at and above which the certificate can be dealt in the power exchange;
- (i) 'Forbearance price' means the ceiling price as determined by the Central Electricity Regulatory Commission in accordance with its (Terms and Conditions for recognition and issuance of Renewable Energy Certificate for Renewable Energy Generation) Regulations, 2010 within which only the certificates can be dealt in the power exchange;
- (j) 'MNRE' means the Ministry of New and Renewable Energy;
- (k) 'Obligated entity' means the entity mandated under clause (e) of subsection (1) of section 86 of the Act to fulfil the renewable purchase obligation and identified under clause 3 of these Regulations;
- (l) 'Person' shall include any company or body corporate or association or body of individuals, whether incorporated or not, or artificial juridical person;
- (m) 'Power Exchange' means any exchange operating as the power exchange for electricity in terms of the orders issued by the Central Commission;
- (n) 'Preferential tariff' means the tariff fixed by the Commission for sale of energy from a generating station based on renewable energy sources to a distribution licensee;
- (o) 'Quantum of purchase' means percentage share of total purchase of electricity from renewable energy sources as specified in these Regulations. The quantum would be the sum of all direct purchases from generating stations based on renewable energy sources and purchase from any other licensee, which would arise from renewable energy sources;
- (p) 'Renewable energy sources' in this context means nonconventional, renewable electricity generating sources such as mini/ micro hydel, wind, solar, biomass and bagasse based cogeneration, urban/municipal waste, or such other sources, (which are generally inexhaustible and can be replenished in a short period of time) as approved by the Ministry of New and Renewable Energy, Government of India or by the State of Gujarat;
- (q) 'State' means the state of Gujarat;
- (r) 'State agency' means the agency in the State of Gujarat to be designated by the Commission to act as the agency for accreditation and recommending the renewable energy projects for registration and to undertake functions under these Regulations;
- (s) 'Supply', in relation to electricity, means the sale of electricity to a licensee or consumer;
- (t) 'Year' means a financial year.

Words and expressions used and not defined in these Regulations but defined in the Act shall have the meanings assigned to them in the Act. Expressions used herein but not specifically defined in these Regulations or in the Act but defined under any law passed by a competent legislature and applicable to the electricity industry in the state shall have the meaning assigned to them by such law. Expressions used herein but not specifically defined in the Regulations or in the Acts or any law passed by a competent legislature shall have the meaning as is generally assigned in the electricity industry.

2.2 Interpretation

For the interpretation of these Regulations, unless the context otherwise requires:

- a. words in the singular or plural term, as the case may be, shall also be deemed to include the plural or the singular term, respectively;
- b. the terms "include" or "including" shall be deemed to be followed by "without limitation" or "but not limited to" regardless of whether such terms are followed by such phrases or words of like import;
- c. references herein to the "Regulations" shall be construed as a reference to these Regulations as amended or modified by the Commission from time to time in accordance with the applicable laws in force;
- d. the headings are inserted for convenience and may not be taken into account for the purpose of interpretation of these Regulations;
- e. references to the statutes, Regulations or guidelines shall be construed as including all statutory provisions consolidating, amending or replacing such statutes, Regulations or guidelines, as the case may be, referred to.

3. Applicability of Renewable Purchase Obligation

These Regulations shall apply to:

- (1) Distribution licensee
- (2) Any other person consuming electricity (i) generated from conventional Captive Generating Plant having capacity of 5 MW and above for his own use and / or (ii) procured from conventional generation through open access and third party sale.

4. Quantum of Renewable Purchase Obligation (RPO)

- 4.1 Each distribution licensee shall purchase electricity (in kWh) from renewable energy sources, at a defined minimum percentage of the total consumption of its consumers including T&D losses during a year. Similarly, Captive and Open Access user(s) / consumer(s) shall purchase electricity (in kWh) from renewable energy sources, at a defined minimum percentage of his/her total consumption during a year.

The defined minimum percentages are given below in the Table 1.

Table 1

Year (1)	Minimum Quantum of purchase (in %) from renewable energy sources (in terms of energy in kWh)			
	Total (2)	Wind (3)	Solar (4)	Biomass, bagasse and others (5)
2010-11	5%	4.5%	0.25%	0.25%
2011-12	6%	5.0%	0.5%	0.5%
2012-13	7%	5.5%	1.0%	0.5%

If the above mentioned minimum quantum of power purchase from solar and other renewable energy sources is not available in a particular year, then in such cases, additional wind or other energy, over and above that shown in column 3 and 5, shall be utilized for fulfillment of the RPO in accordance with column 2.

Provided further that such obligation to purchase renewable energy shall be inclusive of the purchases, if any, from renewable energy sources already being made by the obligated entity concerned:

Provided also that the power purchases under the power purchase agreements for the purchase of renewable energy sources already entered into by the distribution licensees shall continue to be made till their present validity, even if the total purchases under such agreements exceed the percentage as specified hereinabove.

4.2 The Commission may, *suo-motu* or at the request of a licensee, revise the percentage targets for a year as per clause 4.1 of these Regulations keeping in view supply constraints or other factors beyond the control of the licensee.

4.3 For the FY 2009-10, the RPO specified for the years 2008-09, vide Commission's Notification No.15 of 2005 shall be applicable.

4.4 The RPO specified for the Financial Year 2012-13 shall be continued beyond 2012-13 till any revision is effected by the Commission in this regard.

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 Renewable Energy Certificate for Renewable Energy Generation) Regulations, 2010 shall be the valid instruments for the discharge of the mandatory obligations set out in these Regulations for the obligated entities to purchase electricity from renewable energy sources.

Provided that 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 fulfillment 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 Regulatory Commission's (Terms and Conditions for recognition and issuance of Renewable Energy Certificate for Renewable Energy Generation) Regulations, 2010 notified by the Central Electricity Regulatory Commission with regards to the procurement of the certificates for fulfillment of the Renewable 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.

6. State Agency

- The Commission shall designate an agency as the State Agency for accreditation and recommending the renewable energy projects for registration and to undertake functions under these Regulations.
- The State Agency shall function in accordance with the directions issued by the Commission and shall act in accordance with the provisions of the Central Electricity Regulatory Commission (Terms and Conditions for recognition and issuance of Renewable Energy Certificate for Renewable Energy Generation) Regulations, 2010.
- The State Agency shall submit quarterly status to the Commission in respect of compliance of renewable purchase obligation by the obligated entities in the format as stipulated by the Commission and may suggest appropriate action to the Commission, if required, for compliance of the renewable purchase obligation.
- The Commission may from time to time fix the remuneration and charges payable to the State Agency for discharge of its functions under these Regulations.

7. Distribution Licensee

7.1 Each distribution licensee shall indicate, along with sufficient proof thereof, the estimated quantum of purchase from renewable energy sources for the ensuing year in tariff/ annual performance review petition in accordance with Regulations notified by the Commission. The estimated quantum of purchase shall be in accordance with clause 4.1 of these Regulations of the approved power purchase quantity for the ensuing year(s). In the event of the actual consumption in the license area being different from that approved by the Commission, the RPO shall be deemed to have been modified in

accordance with clause 4.1. If the distribution licensee is unable to fulfil the obligation, the shortfall of the specified quantum of that year would be added to the specified quantum for the next year. However, credit for excess purchase from renewable energy sources would not be adjusted in the ensuing year.

7.2 Despite availability of renewable energy sources, if the distribution licensee fails to fulfil the minimum quantum of purchase from renewable energy sources, it shall be liable to pay compensation as per clause 9 of these Regulations.

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

8.1 The quantum of RPO mentioned in clause 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 Every Captive and Open access consumer(s)/ user(s) shall have to submit necessary details regarding total consumption of electricity and purchase of energy from renewable sources for fulfillment of RPO on yearly basis on or before 30th April to the State Agency.

8.3 Captive and Open Access Consumer(s)/ User(s) shall purchase renewable energy as stated in Table 1 of these 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.

9. Consequences of default

9.1 If an obligated entity does not fulfil the renewable purchase obligation as provided in these Regulations during any year and also does not purchase the certificates, the Commission may direct the obligated entity to deposit into a separate fund, to be created and maintained by such obligated entity, such amount as the Commission may determine on the basis of the shortfall in units of RPO and the forbearance price decided by the Central Commission:

Provided that the fund so created shall be utilised, as may be directed by the Commission, partly for purchase of the certificates and partly for development of transmission infrastructure for evacuation of power from generating stations based on renewable energy sources.

Provided that the obligated entities shall not be authorized to use the fund created in pursuance of the above, without prior approval of the Commission;

Provided further that the Commission may empower an officer of the State Agency to procure from the Power Exchange the required number of certificates to the extent of the shortfall in the fulfillment of the obligations, out of the amount in the fund:

Provided also that the distribution licensee shall be in breach of its license condition if it fails to deposit the amount directed by the Commission within 15 days of the communication of the direction.

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.

10. Grid Connectivity

10.1 Any person generating electricity from renewable energy sources, irrespective of installed capacity, shall have open access to any Licensee's transmission system and/or distribution system or grid as the case may be. On an application from such person, the transmission licensee or distribution licensee shall provide appropriate interconnection facilities, as far as feasible, before Commercial Operation Date of the renewable energy project. Such interconnection shall follow the grid connectivity Standards as specified in the Indian Standard Grid Code, State Grid Code and/or the manner prescribed by the Central Electricity Authority.

The STU/SLDC/Licensee shall make best efforts to strengthen the system to provide timely open access to transmit power from renewable energy sources.

11. Cross-Subsidy

Third Party Sale from renewable energy sources shall be exempted from the cross-subsidy surcharge determined by the Commission from time to time. However, no banking facility shall be provided for supply (third party sale) from renewable energy sources through open access. Further, ABT compatible interface metering system capable of energy accounting for each block of 15 minutes shall be provided at both supply as well as drawal point.

For third party sale, energy generation from renewable energy sources in each 15 minute time block shall be set off against the captive/ open access user(s) consumption in the same 15 minute time block.

12. Power to remove difficulties

12.1 The Commission shall *suo motu* or on an application from any person generating electricity from renewable energy sources or a distribution licensee or captive user or open access consumer may review, add, amend or alter these Regulations and pass appropriate orders to remove any difficulty in exercising the provisions of these Regulations.

13. Repeal

13.1 The previous Regulation No.15 of 2005 dt. 29th October, 2005 is hereby repealed.

Place : Ahmedabad
Date : 17 April, 2010.

Sd/-
SANJAY NANDAN AGRAWAL
SECRETARY
Gujarat Electricity Regulatory Commission.

ગુજરાત વિદ્યુત નિયંત્રક આયોગ

નવીનકરણપાત્ર સાધનોમાંથી વીજળીની પ્રાપ્તિ ૨૦૧૦ના જાહેરનામા નં. ૩/૨૦૧૦

૨૦૦૩ ના વીજળી અધિનિયમ ૨૦૦૩નો અધિનિયમ ૩૬) ની કલમ ૬૧, ૬૬, ૮૬, (૧) (દી) અને ૧૮૧ અન્વયે મળેલી સત્તાઓ અને તે અંગે તેને શક્તિમાન બતાવતી તમામ સત્તાઓની રૂમે ગુજરાત વિદ્યુત નિયંત્રક આયોગ, નવીનકરણપાત્ર વીજળી સાધનોમાંથી પ્રાપ્ત વીજળીનું કોઈપણ વ્યક્તિ વેચાણ કરવા પ્રોત્સાહન આપવા અને ગુજરાત રાજ્યની અંદર વિતરણ પરવાનેદાર દ્વારા નવીનકરણપાત્ર સાધનોમાંથી વીજળી પ્રાપ્ત કરવા અંગેના નીચેના વિનિયમો અહીં કરે છે.

૧. ટૂંકું શીર્ષક, વ્યાપ અને પ્રારંભ :

- (૧) આ વિનિયમો ગુજરાત વિદ્યુત નિયંત્રક આયોગ (નવીનકરણપાત્ર) સાધનોમાંથી વીજળી પ્રાપ્તિ, વિનિયમો ૨૦૧૦ કહેવાશે.
- (૨) આ વિનિયમો સમગ્ર ગુજરાત રાજ્ય સુધી વ્યાપ્ત છે.
- (૩) આ વિનિયમો ખંડ ૩ ને બાદ કરતાં રાજ્યપત્રમાં તેથી પ્રસિધ્ય થાય તે તારીખથી અમલમાં આવશે.
- (૪) આ વિનિયમોનો ખંડ-૮ આયોગ અલગ રીતે જાહેર કરે તે તારીખથી અમલમાં આવશે.

૨. વ્યાપ્તા અને અર્થઘટન :

૨.૧ આ વિનિયમોમાં સંદર્ભથી અન્યથા જરૂરી હોય તે સિવાય : -

- (ક) “અધિનિયમ” એટલે ૨૦૦૩ નો વીજળી અધિનિયમ (૨૦૦૩ નો ૩૬ મો અધિનિયમ)
- (ખ) “પુરવણ વિસ્તાર” એટલે વિતરણ પરવાનેદાર જ્યાં વીજળી પૂરી પાડવા અધિકૃત હોય તે વિસ્તાર
- (ગ) “કેન્દ્રીય સંસ્થા” એટલે રાખ્યી વીજભાર રવાનગી કેન્દ્રનું સંચાલન કરતી સંસ્થા અથવા કેન્દ્રીય આયોગ વખતોવખત નિર્દિષ્ટ કરે તેવી અન્ય સંસ્થા.

(ઘ) "કેન્દ્રીય આયોગ" એટલે અધિનિયમની કલમ-૭થની પેટા કલમ (૧) માં ઉલ્લેખ કરેલ કેન્દ્રીય વીજળી નિયંત્રણ આયોગ

(ય) "પ્રમાણપત્ર" એટલે કેન્દ્રીય સંસ્થા દ્વારા કરાવેલ કાર્યપદ્ધતિ અનુસાર અને કેન્દ્રીય વીજળી નિયંત્રણ આયોગ (નવીકરણપાત્ર વીજળી ઉત્પાદન માટે નવીકરણપાત્ર વીજળી પ્રમાણપત્ર માન્ય કરીને આપવા અંગેની શરતો) વિનિયમો, ૨૦૧૦ માં નિર્દિષ્ટ જોગવાઈઓ અન્વયે સંસ્થાને આપેલ નવીકરણપાત્ર વીજળી પ્રમાણ પત્ર

(૭) "આયોગ" એટલે ગુજરાત વિદ્યુત નિયંત્રક આયોગ

(૮) "વિતરણ પરવાનેદાર" એટલે તેના પુરવણા વિસ્તારમાં ગ્રાહકોને વીજળી પૂરી પાડવાની વિતરણ વ્યવસ્થાના સંચાલન અને જાળવણી કરવા અધિકૃત પરવાનેદાર

(૯) "તળિયાના ભાવ" એટલે કેન્દ્રીય વીજળી નિયંત્રણ આયોગ દ્વારા તેના (નવીકરણપાત્ર વીજળી ઉત્પાદન માટે નવીકરણપાત્ર વીજળી પ્રમાણપત્ર વીજળી ઉત્પાદન માટે નવીકરણપાત્ર વીજળી પ્રમાણપત્રની માન્યતાને તે આપવા અંગેની શરતો) ૨૦૧૦ના વિનિયમો અનુસાર નક્કી કરાવેલ ન્યૂનતમ ભાવ, જે અન્વયે પ્રમાણપત્ર વીજળી વિનિયમોમાં હાથ ધરી શકશે.

(૧૦) "ફોરબેરન્સ પ્રાઇઝ" એટલે કેન્દ્રીય વીજળી નિયંત્રણ આયોગ, તેના ૨૦૧૦ના વિનિયમો અનુસાર (નવીકરણપાત્ર વીજળી ઉત્પાદન માટે નવીકરણપાત્ર વીજળી પ્રમાણપત્રથી માન્યતા અને તે આપવા અંગેની શરતો) જે અન્વયે વીજળી વિનિયમો અનુસાર નક્કી કરવામાં આવે તે ટોચના ભાવ. જે અંતર્ગત માત્ર પ્રમાણપત્રો વીજળી વિનિયમ અંગે હાથ ધરી શકશે.

(૧૧) MNRE એટલે નવીન અને નવીકરણપાત્ર ઉર્જા મંત્રાલય

(૧૨) "જવાબદાર હસ્તિ" એટલે અધિનિયમની કલમ-૮થની પેટા કલમ(૧) ના ખંડ (૬) અન્વયે નવીકરણપાત્ર વીજળી ખરીદીની જવાબદારી પરિપૂર્ણ કરવા આદેશ અપાયેલ અને આ વિનિયમોના ખંડ-૩ અન્વયે મુકરર કરેલ હસ્તિ

(૧૩) "વ્યક્તિત" માં સંસ્થાપિત હોય ન હોય, તેવી કોઈપણ કંપની, કોર્પોરેટ સંસ્થા કે એસોસીએશન કે વ્યક્તિતાની સંસ્થા અથવા કૃત્રિમ અદાવતી વ્યક્તિત

(૧૪) "વીજળી વિનિયમ" એટલે કેન્દ્રીય આયોગે ઈશ્યૂ કરેલા આદેશોના સંદર્ભમાં વીજળી માટે વીજળી વિનિયમ તરીકે સંચાલિત કોઈપણ વિનિયમ (એક્સચેન્જ),

(૧૫) "અગ્રાહિકાર પ્રશુલ્ક" એટલે નવીકરણપાત્ર વીજળી પર આધારિત વીજ મથકમાંથી વીજળીનું વિતરણ પરવાનેદારો વેચાણ કરવા આયોગે નક્કી કરેલ પ્રશુલ્ક,

(૧૬) "ખરીદીનો જથ્થો" એટલે આ વિનિયમોમાં નિર્દિષ્ટ કર્યા પ્રમાણે નવીકરણપાત્ર વીજળી સાધનોમાંથી વીજળીની કુલ ખરીદીનો ટકાવારી હિસ્સો જથ્થો એટલે નવીકરણપાત્ર વીજળી સાધનો પર આધારિત વીજ-મથકોમાંથી તમામ સીધી ખરીદી અને નવીકરણપાત્ર વીજળી સાધનોમાંથી ઉત્પન્ન અન્ય કોઈપણ પરવાનેદાર પાસેથી કરેલી ખરીદીનો સરવાળો થશે.

(૧૭) આ સંદર્ભમાં " નવીકરણપાત્ર વીજળી સાધનો" એટલે બિનપરંપરાગત, નવીકરણપાત્ર વીજળી ઉત્પાદન સાધનો, જેમકે મીની માઈકો હાઈડલ, પવન, સૌર્ય, બાયોમાસ અને બાયોગેસ આધારિત સહ-ઉત્પાદન, શહેરી/ખુનિસિપલ કચરો અથવા આ બીજાં સાધનો (જે સામાન્ય રીતે) જે વપરાઈ જતાં નથી અને ટૂંકા સમયમાં ફરીથી ભરાઈ જાય છે તેવાં નવીન અને નવીકરણપાત્ર ઉર્જા મંત્રાલય, ભારત સરકાર અથવા ગુજરાત રાજ્ય દ્વારા મંજૂર કર્યા મુજબનાં સાધનો :

(૧૮) "રાજ્ય" એટલે ગુજરાત રાજ્ય

(૧૯) "રાજ્ય સંસ્થા" એટલે નવીકરણપાત્ર વીજળી પરિયોજનાઓમાંથી નોંધણી માટે માન્યતા આપવા અને ભલામણ કરવા અને વિનિયમો હેઠળ કર્યા હાથ ધરવાનાં સંસ્થા તરીકે કામ કરવા આયોગ દ્વારા નામ નિર્દિષ્ટ ગુજરાત રાજ્યની સંસ્થા,

(૨૦) વીજળીના સંબંધમાં "પુરવણા" એટલે પરવાનેદાર કે ગ્રાહકને વીજળીનું વેચાણ

(૨૧) "વર્ષ" એટલે નાણાંકીય વર્ષ.

આ વિનિયમોમાં વપરાયેલ અને વ્યાખ્યા ન અપાયેલ, પરંતુ અધિનિયમમાં વ્યાખ્યા અપાયેલ શબ્દો અને શબ્દપ્રયોગોને અર્થ અધિનિયમોમાં તેને માટે નિર્દિષ્ટ કરાયેલ અર્થ રહેશે. અહીં વપરાયેલ પરંતુ વિનિયમો કે અધિનિયમોમાં વ્યાખ્યાની ન અપાયેલ પરંતુ સક્ષમ વિધાનસભા દ્વારા પસાર કરાયેલ કોઈપણ કાપદા હેઠળ વ્યાખ્યા કરાયેલ અને રાજ્યમાં વીજળી ઉદ્યોગને લાગુ પડતા શબ્દપ્રયોગોનો અર્થ આવા કાયદામાં નિર્દિષ્ટ કરાયા મુજબનો અર્થ રહેશે. અહીં વપરાયેલ પરંતુ

વિનિયમો કે અધિનિયમો કે સંસ્કૃતિક વિધાનસભાએ પસાર કરેલ કાયદામાં ખાસ વ્યાખ્યા ન અપાઈ હોય તેવા શબ્દપ્રયોગોનો અર્થ, વીજળી ઉદ્યોગના સામાન્ય તથા નિર્દિષ્ટ હોય તે મુજબનો રહેશે.

૨.૨ અર્થધટન :

સંદર્ભથી અન્યર્થા જરૂરી હોય તે સિવાય આ વિનિયમોનું અર્થધટન નીચે પ્રમાણે થશે.

- ક પથાપ્રસંગ એકવચન કે બહુવચન શબ્દોમાં, અનુક્રમે બહુવચન કે એકવચન શબ્દોનો સમાવેશ થતો હોવાનું ગણવામાં આવશે.
- ખ “સમાવિષ્ટ” અથવા “સહિત” શબ્દો, આવા શબ્દો પછી આપાત જેવા શબ્દો કે વાક્યાંશો આવે કે કેમ તે લક્ષમાં લીધા વિના “મર્યાદા રહિત” અથવા “તેટલા પૂર્તું મર્યાદિત નથી” એમ આવતા હોવાનું ગણવામાં આવશે.
- ગ “વિનિયમો” ને લગતા અહીં આપેલા સંદર્ભોના અર્થ, અમલમાં હોય તે કાયદા અનુસાર આપોગ દ્વારા વખતોવખત ફેરફાર કે સુધારો કરાય તે પ્રમાણે આ વિનિયમોને લગતા સંદર્ભ તરીકે કરવામાં આવશે.
- ધ શીર્ષકો અનુકૂળતા માટે આપ્યા છે અને તેને આ વિનિયમોના અર્થધટનના હેતુ માટે વિચારણામાં લઈ શકાશે નહીં.
- ય કાનૂનો, વિનિયમો કે માર્ગદર્શક સૂચનાઓને લગતા સંદર્ભો, પથાપ્રસંગ આવા કાનૂનો, વિનિયમો કે માર્ગદર્શક સૂચનાઓને એકત્રિત કરતી, સુધારણા કરતી કે ફેરબદલી કરવી વૈધાનિક જોગવાઈઓનો સમાવેશ કરતા હોવાનું ગણાશે.

૩. નવીકરણપાત્ર ખરીદી જવાબદારીની પ્રયોજયતા :

આ વિનિયમો લાગુ પડશે.

(૧) વિતરણ પરવાનેદાર

- (૧) (૧) ૫ મે.વો. અને તેથી વધુ ક્ષમતા ધરાવતા પરંપરાગત કેટિવ વીજ ઉત્પાદન ખાનટમાંથી તેના પોતાના ઉપયોગ માટે ઉત્પાદિત અને/અથવા (૨) ખુલ્લા પ્રવેશથી અને ત્રીજા પક્ષકારના વેચાણ મારફત પરંપરાગત વીજ ઉત્પાદનમાંથી મેળવેલ વીજળીનો વપરાશ કરનાર બીજ કોઈપણ વ્યક્તિ

૪. નવીકરણપાત્ર વીજળી ખરીદીના જથ્થાની જવાબદારી :

- ૪.૧ દરેક વિતરણ પરવાનેદાર, વર્ષ દરમ્યાન પ્રવાહન અને વિતરણ ઘટ સહિત તેના વપરાશકારોના કુલ વપરાશથી નિયત ન્યૂનતમ ટકાવારીએ, નવીકરણપાત્ર ઉજ્જી સાધનોમાંથી વીજળી (કિ. વો. કલાકમાં) ની ખરીદી કરશે.

તે જ પ્રમાણે, કેટિવ અને ખુલ્લા પ્રવેશના વપરાશકર્તા(ઓ)/ગ્રાહકો વર્ષ દરમ્યાન તેની/તેજીની નિયત ન્યૂનતમ ટકાવારીએ નવીકરણપાત્ર ઉજ્જી સાધનોમાંથી વીજળીની (કિ. વો. કલાકમાં) ખરીદી કરશે.

નિયત ન્યૂનતમ ટકાવારી કોઠા -૧ માં નીચે દર્શાવી છે.

કોઠો-૧

વર્ષ	નવીકરણપાત્ર ઉજ્જી સાધનોમાંથી ખરીદીને (૦ % માં) ન્યૂનતમ જથ્થો (કિ. વો. કલાકમાં) વીજળીના સંદર્ભમાં			
	કુલ	પવન	સૌર્ય	બાયોમાસ, બાયોગેસ અને અન્ય
૧.	૨.	૩.	૪.	૫.
૨૦૧૦-૧૧	૫ %	૪.૫ %	૦.૨૫ %	૦.૨૫ %
૨૦૧૧-૧૨	૬ %	૪.૦ %	૦.૪ %	૦.૪ %
૨૦૧૨-૧૩	૭ %	૪.૫ %	૧.૦ %	૦.૪ %

ચોક્કસ વર્ષમાં સૌર્ય અને અન્ય નવીકરણપાત્ર ઉજ્જી સાધનોમાંથી ખરીદીનો ઉપર્યુક્ત ન્યૂનતમ જથ્થો ન મળી શકે તો પછી આવા કેસોમાં ખાના ત અને ૫ માં દર્શાવ્યા ઉપરાંત વધારાની પવન કે અન્ય ઉજ્જીનો ખાના-૨ અનુસાર નવીકરણપાત્ર ખરીદીની જવાબદારી પરિપૂર્ણ કરવા ઉપયોગમાં લેવાશે.

પરંતુ આવી નવીકરણપાત્ર વીજળી ખરીદવાની જવાબદારીમાં સંબંધિત જવાબદારીવાળી હસ્તિ દ્વારા નવીકરણપાત્ર વીજળી સાધનોમાંથી કોઈ ખરીદી કરાય તો તેનો સમાવેશ થશે.

પરંતુ, વિતરણ પરવાનેદારોએ, નવીનીકરણપાત્ર વીજળી સાધનોથી ખરીદી માટે કરેલ વીજ ખરીદી સમજૂતિઓ અન્વયે વીજળીની ખરીદી, તેની વર્તમાન કાયદેસરતા રહે ત્યાં સુધી, આવી સમજૂતિઓ હેઠળની કુલ ખરીદી નહીં ઉપર નિર્દિષ્ટ કર્યા મુજબની ટકાવારી કરતાં વધી જાય તો પણ ચાલુ રહેશે.

૪.૨ આયોગ પરવાનેદારની વિનંતીથી આયોગ, સ્વયં, પુરવઢ અવરોધો તથા પરવાનેદારના કાબૂ બલારના અન્ય પરિબળો ધ્યાનમાં રાખીને આ વિનિયમોના ખંડ ૪.૧ અનુસાર વર્ષ માટે ટકાવારીના લક્ષ્યાંકમાં ફેરફાર કરી શકશે.

૪.૩ ૨૦૦૮-૧૦ ના નાણાકીય વર્ષ માટે આયોગના ૨૦૦૫ના જાહેરનામા નં. ૧૫ અન્વયે ૨૦૦૮-૦૯ ના વર્ષ માટે નિર્દિષ્ટ RPO લાગુ પડશે.

૪.૪ ૨૦૧૨-૧૩ના નાણાકીય વર્ષ માટે નિર્દિષ્ટ નવીકરણપાત્ર વીજ-ખરીદી જવાબદારી, આ અંગે આયોગ દ્વારા કોઈ ફેરફાર અમલમાં ન મૂકાય ત્યાં સુધી ૨૦૧૨-૧૩ પછી પણ ચાલુ રહેશે.

૫. કેન્દ્રીય આયોગ વિનિયમો અન્વયે પ્રમાણપત્ર :

૫.૧ આ વિનિયમોમાં સમાવિષ્ટ શરતોને અધીન રહીને, કેન્દ્રીય વીજળી નિયંત્રણ આયોગના (નવીકરણપાત્ર વીજળી ઉત્પાદન માટે નવીકરણપાત્ર વીજળી પ્રમાણપત્રની માન્યતા અને તે આપવા અંગેની શરતો) વિનિયમો ૨૦૧૦, નવીકરણપાત્ર વીજળી સાધનોમાંથી વીજળી ખરીદવાની જવાબદાર હસ્તિઓ માટે આ વિનિયમોમાં દરાવેલ આદેશાત્મક જવાબદારીઓ બજાવતા, કાયદેસર દસ્તાવેજ તરીકે ગણાશે.

પરંતુ જવાબદારી ધરાવનાર હસ્તિઓ પ્રમાણપત્રોથી ખરીદી દ્વારા નવીકરણપાત્ર ખરીદીની જવાબદારી પરિપૂર્ણ કરે તેવા કેસમાં, સૌર્ય સિવાય અન્ય નવીકરણપાત્ર વીજળી પર આધારિત ઉત્પાદનમાંથી વીજળી ખરીદવાની જવાબદારી, બિન-સૌર્ય, પ્રમાણપત્રમાંથી ખરીદી દ્વારા પરિપૂર્ણ કરી શકાશે અને નવીકરણપાત્ર વીજળી સાધન તરીકે સૌર્ય પર આધારિત ઉત્પાદનમાંથી વીજળીની ખરીદી માત્ર સૌર્ય પ્રમાણપત્ર ખરીદીને જ પરિપૂર્ણ કરી શકાશે. ચોક્કસ વર્ષમાં સૌર્ય પ્રમાણપત્રો ઉપલબ્ધ ન હોય તો આપવા કેસોમાં, કોઠાના-૧ અનુસાર RPO ની પરિપૂર્ણતા માટે વધારાના બિન-સૌર્ય પ્રમાણપત્રો ખરીદવામાં આવશે.

૫.૨ આયોગ વખતોવખત આપે તેવા આદેશોને અધીન રહીને, જવાબદારીવાળી હસ્તિ, આ વિનિયમો અન્વયે નવીકરણપાત્ર ખરીદી જવાબદારી પરિપૂર્ણ કરવા પ્રમાણપત્રોની પ્રાપ્તિ કેન્દ્રીય વીજળી નિયંત્રણ આયોગ દ્વારા જાહેર કરાયેલ કેન્દ્રીય વીજળી નિયંત્રણ આયોગના (નવીકરણપાત્ર વીજળી ઉત્પાદન માટે નવીકરણપાત્ર વીજળી પ્રમાણપત્રની માન્યતા અને તે આપવા અંગેની શરતો) વિનિયમો, ૨૦૧૦ સાથે સુસંગત રહીને કામ કરશે.

૫.૩ આ વિનિયમોના ખંડ ૫.૧ માં દર્શાવેલ કેન્દ્રીય આયોગના વિનિયમના સંદર્ભમાં જવાબદારીવાળી હસ્તિઓએ પાવર એક્ષેન્જમાંથી ખરીદેલ પ્રમાણપત્રો, જવાબદારીવાળી હસ્તિઓ ખરીદીના ૧૫ દિવસની અંદર આયોગ પાસે અનામત મૂકશે.

૬. રાજ્ય સંસ્થા :

(ક) નવીકરણપાત્ર વીજળી પરિયોજનાઓની માન્યતા અને તેની ભલામક્ષ કરવા અને આ વિનિયમો હેઠળ કાર્યો ધાર્થ ધરવાં આયોગ રાજ્ય સંસ્થા તરીકે એક સંસ્થા નામ નિર્દિષ્ટ કરશે.

(ખ) રાજ્ય સંસ્થા, આયોગે આપેલા આદેશો અનુસાર કામ કરશે અને કેન્દ્રીય વીજળી નિયંત્રણ આયોગ (નવીકરણપાત્ર વીજળી ઉત્પાદન માટે નવીકરણપાત્ર વીજળી પ્રમાણપત્રની માન્યતાઓ તે આપવા અંગેની શરતો) વિનિયમો, ૨૦૧૦ ની જોગવાઈઓ અનુસાર કામ કરશે.

(ગ) રાજ્ય સંસ્થા, આયોગને, તેણે નિયત કરેલા દાંચામાં જવાબદારીવાળી હસ્તિ દ્વારા નવીકરણપાત્ર ખરીદી જવાબદારીના પાલન અંગેની સ્થિતિ દર ત્રણ મહિને રજૂ કરશે તથા નવીકરણપાત્ર ખરીદી જવાબદારીના પાલન માટે જરૂરી જણાય તો આયોગને યોગ્ય પગલાં સૂચયશે.

(ધ) આયોગ, આ વિનિયમો અન્વયે રાજ્ય સંસ્થાને બજાવવાનાં કાર્યો માટે તેને ચૂકવવાપાત્ર વળતર અને ચાર્જ વખતો-વખત નક્કી કરશે.

૭. વિતરણ પરવાનેદાર : -

૭.૧ દરેક વિતરણ પરવાનેદાર, આયોગ જાહેર કરેલ વિનિયમો અનુસાર આગામી વર્ષ માટે, પ્રશુલ્ક/વાર્ષિક કામગીરી સમીક્ષા પીટિશનમાં નવીકરણપાત્ર વીજળી સાધનોમાંથી ખરીદીનો અંદાજ જથ્થો, તેની પૂર્તી સાબિતી સાથે દર્શાવશે. ખરીદીનો અંદાજીત જથ્થો, આગામી વર્ષ (વર્ષો) માટે મંજૂર કરેલ વીજળી ખરીદી જથ્થાના આ વિનિયમોના ખંડ ૪.૧ અનુસાર રહેશે. લાઈસન્સના વિસ્તારમાં ખરેખરો વપરાશ, આયોગ મંજૂર કર્યો હોય તે કરતાં જુદો હોય તેવા પ્રસંગે, ખંડ ૪.૧ અનુસાર નવીકરણપાત્ર ખરીદી જવાબદારીમાં ફેરફાર કર્યો હોવાનું ગણવામાં આવશે. વિતરણ પરવાનેદાર જવાબદારી પરિપૂર્ણ કરી શકે તેમ ન હોય તો, તે વર્ષના નિર્દિષ્ટ જથ્થાની ઘટ, આગામી વર્ષના નિર્દિષ્ટ જથ્થામાં ઉમેરવામાં આવશે. આમ છતાં નવીકરણપાત્ર વીજળી સાધનોમાંથી અતિશય ખરીદીની જમા-નોંધ આગામી વર્ષમાં સમાયોજિત કરાશે નહીં.

૭.૨ નવીકરણપાત્ર વીજળી સાધનોની પ્રાય્યતા છતાં, વિતરણ પરવાનેદાર નવીકરણપાત્ર વીજળી સાધનોમાંથી ન્યૂનતમ જથ્થાની ખરીદી પરિપૂર્ણ કરવામાં નિષ્ફળ જાય તો તે આ વિનિયમોના ખંડ-૧ અનુસાર વળતર ચૂકવવા જવાબદાર બનશે.

૮. કેસ્ટિવ અને ખુલ્લા પ્રવેશના વપરાશકર્તા(ઓ)/ગ્રાહક (ગ્રાહકો) : -

૮.૧ ખંડ ૪.૧ માં દર્શાવેલ RPO નો જથ્થો, સરકારી રાજ્યપત્રમાં જાહેર કરાય તે તારીખથી કેસ્ટિવ અને ખુલ્લા પ્રવેશના વપરાશકર્તા(ઓ)/ગ્રાહકો(કો) ને લાગુ પડશે.

૮.૨ દરેક કેસ્ટિવ અને ખુલ્લા પ્રવેશના ગ્રાહક(કો) વપરાશકર્તા(ઓ) અને, રાજ્ય સંસ્થાને ત૦મી એપ્રિલ કે તે પહેલાં વાર્ષિક ધોરણે, RPO ની પરિપૂર્ણતા માટે નવીકરણપાત્ર સાધનોમાંથી વીજળીની ખરીદી અને વીજળીના કુલ વપરાશની કુલ વપરાશની જરૂરી વિગતો રજૂ કરવાની રહેશે.

૮.૩ કેસ્ટિવ અને ખુલ્લા પ્રવેશના વપરાશકર્તા(ઓ)/ગ્રાહક(ઓ), આ વિનિયમોના કોઠા-૧માં દર્શાવ્યા પ્રમાણે નવીકરણપાત્ર વીજળીની ખરીદી કરશે. કેસ્ટિવ વપરાશકર્તા(ઓ) અને ખુલ્લા પ્રવેશના ગ્રાહક(કો) માપદંડ પરિપૂર્ણ ન કરી શકે તો, લક્ષ્યાંકિત જથ્થાની ઘટ માટે ખંડ-૧ અનુસાર નિયંત્રક ચાર્જની ચૂકવણી કરવાની રહેશે.

૮.૪ કેસ્ટિવ / ખુલ્લા પ્રવેશના વપરાશકર્તા(ઓ)/ગ્રાહક(કો) ઉપરના ખંડ-૬ માં જોગવાઈ કર્યા પ્રમાણે નવીકરણપાત્ર વીજળી પ્રમાણપત્ર મારફત તેના RPO પરિપૂર્ણ કરી શકશે.

૯. કસૂરનાં પરિણામો : -

૯.૧ જવાબદાર હસ્તિ કોઈપણ વર્ષ દરમ્યાન જોગવાઈ કર્યા પ્રમાણે નવીકરણપાત્ર ખરીદી જવાબદારી પરિપૂર્ણ ન કરે અને પ્રમાણપત્રો ન ખરીદે તો આયોગ જવાબદાર હસ્તિને ફરમાવી શકે કે તેણે ઉભા કરવાના જાળવવાના અલગ ફંડમાં, આયોગ RPO ના એકમોનાં ઘટને આધારે નક્કી કરે તેટલી રકમ અને કેન્દ્રીય આયોગ દ્વારા નક્કી કરાયેલ ફોરબેરેન્સ રકમ અનામત મૂકે.

પરંતુ આ રીતે ઉભા કરેલ ફંડનો ઉપયોગ, આંશિક પ્રમાણપત્રો ખરીદવા અને આંશિક નવીકરણપાત્ર વીજળી સાધનો પર આધારિત વીજ ઉત્પાદન મથકોમાંથી વીજળી ખાલી કરવા પ્રવાહન પૂર્વજરૂરી માળખું વિકસાવવા આયોગ ફરમાણે છે મુજબ કરશે.

પરંતુ જવાબદાર હસ્તિ, આયોગની પૂર્વમંજૂરી વિના ઉપરના અનુસંધાનમાં ઉભા કરેલ ફંડનો ઉપયોગ કરવાની સત્તા રહેશે નહીં.

પરંતુ આયોગ, ફંડની રકમમાંથી જવાબદારીને પરિપૂર્ણ કરવામાં પડેલી ઘટના પ્રમાણમાં પાવર એક્ષયેન્જમાંથી જોઈતી સંખ્યાનાં પ્રમાણપત્રો મેળવતા રાજ્ય સંસ્થાના અધિકારીને સત્તા આપી શકે.

પરંતુ વિતરણ પરવાનેદાર, આદેશ આપ્યાના ૧૫ ટિવિસની અંદર આયોગ ફરમાવેલ રકમ અનામત મૂકવામાં નિષ્ફળ જાય તો તે લાઈસન્સની શરતનો બંગ ગણાશે.

પરંતુ નવીકરણપાત્ર વીજળી સાધનો કે REC પાસેથી વીજળી ન મળવાને કરાણે નવીકરણપાત્ર ખરીદી જવાબદારીનું પાલન કરવાના કોઈ સાચી મુશ્કેલી હોય તો, જવાબદાર હસ્તિ, બીજા વર્ષની પાલન જવાબદારી આગળ ખેચવા આયોગનો સંપર્ક કરી શકશે.

પરંતુ વધુમાં, આયોગ પાલનની આવશ્યકતા આંગળ ખેચવાની સંમતિ આપી હોય ત્યાં ઉપર નિર્દિષ્ટ કરેલ નિયંત્રક ચાર્જની ચુકવણી અંગેની જવાબદારી લાગુ પડશે નહીં.

૧૦. ગ્રિડ જોડાણ :

૧૦.૧ સ્થાપિત શક્તિને લક્ષમાં લીધા વિના કોઈ વ્યક્તિત નવીકરણપાત્ર વીજળી સાધનોમાંથી વીજળી ઉત્પત્ત કરતી હોય તો તેને, યથાપ્રસંગ કોઈપણ પરવાનેદારની પ્રવાહન સિસ્ટમ અને/અથવા વિતરણ સિસ્ટમ અથવા ગ્રિડમાં ખુલ્લો પ્રવેશ મળી રહેશે. આવી વ્યક્તિ પાસેથી અરજી મળતાં, પ્રવાહન જે વિતરણ પરવાનેદાર, નવીકરણપાત્ર વીજળી પરિયોજનામાંથી વાણિજ્યત સંચાલનની તારીખ પહેલાં, શક્ય હોય તેટલા પ્રમાણમાં યોગ્ય આંતર-જોડાણ પૂરું પાડશે. આવું આંતર-જોડાણ કર્યા બાદ ભારતીય માનક ગ્રિડ સંહિતા, રાજ્ય ગ્રિડ સંહિતા અને / અથવા કેન્દ્રીય વીજળી તંત્ર દ્વારા ઠરાવેલી રીતે પ્રમાણે ગ્રિડ જોડાણ ધોરણો અનુસરવાના રહેશે.

STU/SLDC/ પરવાનેદાર, નવીકરણપાત્ર વીજળી સાધનોમાંથી વીજળીનું વહન કરવા સમયસર ખુલ્લો પ્રવેશ પૂરો પાડવા સિસ્ટમને સંગીન કરવાના ઉત્તમ પ્રયત્નો કરશે.

૧૧. કોસ સબસીડી :-

નવીકરણપાત્ર વીજળી સાધનોમાંથી ત્રીજા પક્ષકારના વેચાણને, આયોગના વખતોવખત નક્કી કરે કે કોસ સબસીડી સરચાર્જમાંથી મુક્ત રાખશે.

આમદાદાં, ખુલ્લા પ્રવેશ મારફત નવીકરણપાત્ર વીજળી સાધનોમાંથી પુરવઠા માટે (ત્રીજા પક્ષકારને વેચાણ) કોઈ બેન્કિંગ સુવિધા અપાશે નહીં. ૧૫ મિનિટમાં દરેક બ્લોક માટે વીજળી હિસાબ કરવા સક્ષમ ABT સુસંગત ઇન્ટરફેઝ મીટરીંગ સિસ્ટમ પુરવઠો તેમજ ઉપાડના એમ બંને સ્થળોએ પૂરી પડશે.

ત્રીજા પક્ષકારને વેચાણ માટે, ૧૫ મિનિટના દરેક સમય બ્લોકમાં નવીકરણપાત્ર વીજળી સાધનોમાંથી વીજળી ઉત્પાદનો, તે જ ૧૫ મિનિટના સમય બ્લોકમાં કેન્દ્રિય/ખુલ્લા પ્રવેશ વપરાશકર્તાના વપરાશ સામે મજરે આપવામાં આવશે.

૧૨. મુશ્કેલીઓ દૂર કરવાની સત્તા :-

૧૨.૧ આયોગ સ્વયં અથવા નવીકરણપાત્ર વીજળી સાધનોમાંથી વીજળી ઉત્પત્ત કરનાર કોઈ વ્યક્તિ પાસેથી અથવા પરવાનેદાર કે કેન્દ્રિય વપરાશકર્તા કે ખુલ્લા પ્રવેશના ગ્રાહક પાસેથી અરજી મજ્યેથી આ વિનિયમોની સમીક્ષા, ઉમેરો, સુધારો કે ફેરફાર કરશે અને આ વિનિયમોની જોગવાઈઓ અમલી બનાવવામાં પડતી કોઈપણ મુશ્કેલીઓ દૂર કરવા યોગ્ય ઉદ્દેશો પસાર કરશે.

૧૩. રદ કરવું :-

૧૩.૧ તા. ૨૮ ઓક્ટોબર, ૨૦૦૮ નો અગાઉનો વિનિયમ નં. ૧૫ અહીં રદ કરવામાં આવે છે.

સ્થળ : અમદાવાદ

સહી/-

તારીખ : ૧૭ એપ્રિલ, ૨૦૧૦

સંજ્ય નંદન અગ્રવાલ,

સચિવ

ગુજરાત વિદ્યુત નિયંત્રક આયોગ.

સરકારી મધ્યસ્થ મુદ્રણાલય, ગાંધીનગર.

Annexure P-2**GUJARAT ELECTRICITY REGULATORY COMMISSION (GERC)**

GUJARAT ELECTRICITY REGULATORY COMMISSION (PROCUREMENT OF ENERGY FROM RENEWABLE SOURCES) (FIRST AMENDMENT) REGULATIONS, 2014

Notification: No. 2 of 2014

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) (First Amendment) Regulations, 2014.
- (ii) These Regulations 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 except Regulation No. 5.4 and 5.5 of this regulations which shall come into effect from 1st April, 2014.

3) Addition in Regulation 2.1 of the Principal Regulations:

A new Regulation 2.1 (aa) shall be added after the Regulation 2.1 (a) of the Principal Regulations as under:-

2.1 (aa) '**Average Power Purchase Cost**' means the weighted average pooled price at which the distribution licensee has purchased the electricity including cost of self generation, if any, in the previous year from all the energy suppliers long-term and short-term, but excluding those based on renewable energy sources, as the case may be.

4) Substitution of Table 1 of Regulation 4.1

The table 1 provided in Principal Regulation 4.1 shall be substituted by following table 1

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

5) Addition of Regulations 5.4 and 5.5 in Principal Regulation

The Regulation 5.4 shall be added after Regulation 5.3 in Principal Regulation as under:

5.4 : The Commission shall determine the '**Average Power Purchase Cost**' of the distribution licensee concerned on annual basis. The Average Power Purchase Cost determined by the commission shall be required to be paid by the distribution licensee when the distribution licensee purchases the electrical component of the renewable energy projects registered under the REC scheme notified by the Central Electricity Regulatory Commission.

The Regulation 5.5 shall be added after proposed Regulation 5.4 in Principal Regulation as under:

In case of renewable energy generator set up under the REC scheme notified by the Central Electricity Regulatory Commission supplying power for captive use or sale to third party, the distribution licensee shall pay to such RE generator the Average Power Purchase Cost for the surplus energy available after giving set off for the consumption by such captive consumer or the third party.

Sd/-

[Dilip Raval]

Secretary

Date: 04 /03 /2014.

Place: Gandhinagar.

Annexure P-3

Extra No. 347

વार्षिक લવાજમનો દર રૂ. ૪૦૦૦/-

C



The Gujarat Government Gazette
EXTRAORDINARY
PUBLISHED BY AUTHORITY

Vol. LIX] MONDAY, APRIL 23, 2018/VAISAKHA 3, 1940

Separate paging is given to this Part in order that it may be filed as a Separate Compilation.

PART IV-C

Statutory Rules and Orders (Other than those published in Parts I, I-A and I-L) made by Statutory Authorities other than the Government of Gujarat including those made by the Government of India, the High Courts, the Director of Municipalities, the Commissioner of Police, the Director of Prohibition and Excise, the District Magistrates and the Election Commission, Election Tribunals, Returning Officers and other authorities under the Election Commission.

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:

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.

ROOPWANT SINGH, IAS

Secretary

Gujarat Electricity Regulatory Commission
Gandhinagar, Gujarat

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

Annexure P-4**GUJARAT ELECTRICITY REGULATORY COMMISSION (GERC)****GUJARAT ELECTRICITY REGULATORY COMMISSION (PROCUREMENT OF ENERGY FROM RENEWABLE SOURCES) (THIRD AMENDMENT) REGULATIONS, 2022****Notification No. 01 of 2022**

In exercise of the powers conferred under Sections 61, 86(1)(e) and 181 of the Electricity Act, 2003 (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 the 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) (Third Amendment) Regulations, 2022.
- (ii). These Regulations 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) Amendment of Regulation 2:

The clause (p) of Regulation (2) of the Principal Regulations shall be substituted with the following, namely:-

"(p) "Renewable energy sources" means non-conventional, renewable electricity generating sources such as mini/micro/small hydro power projects upto and including 25 MW capacity, wind, solar, biomass, bagasse, bio-fuel based cogeneration, urban or municipal waste and Large Hydro Power Plant of capacity above 25 MW and commissioned after 8th March, 2019 as per MoP,

Government of India Notification No. F. No. 15/2/2016-H-I (Pt.) dated 08.03.2019 and such other sources as recognized or approved by the Central Government or by the State of Gujarat. The energy generated from Large Hydro Power Projects (LHPs) with an installed capacity above 25 MW which come into commercial operation after 8th March, 2019 shall be eligible for fulfilling the Hydro Power Purchase Obligation (HPO)"

3) Substitution of Table II of Regulation 4.1:

Table II provided in the Gujarat Electricity Regulatory Commission (Procurement of Energy from Renewable Sources) (Second Amendment) Regulations, 2018 shall be substituted by following Table - II:

Table – II: Minimum percentage for Renewable Power Purchase Obligation

Year	Minimum Quantum of purchase (in %) from renewable energy sources (in terms of energy in kWh)				
	Wind (%)	Solar (%)	Hydro Power Purchase Obligation (HPO) (%)	Others (Biomass, Bagasse & Bio-fuel based cogeneration, MSW and Small/Mini/Micro Hydro) (%)	Total (%)
(1)	(2)	(3)	(4)	(5)	(6)
2017-18	7.75	1.75		0.50	10.00
2018-19	7.95	4.25		0.50	12.70
2019-20	8.05	5.50		0.75	14.30
2020-21	8.15	6.75		0.75	15.65
2021-22	8.25	8.00		0.75	17.00
2022-23	8.25	8.00		0.75	17.00
2023-24	8.40	9.50	0.05	0.75	18.70
2024-25	8.55	11.25	0.10	0.80	20.70

4) Substitution of para 2 of Principal Regulation 4.1

Provided that:

- Hydro power Purchase Obligation (HPO) shall be met from the power procured from eligible large hydro power projects (LHPs) including pump storage projects having capacity of more than 25 MW commissioned on

and after 08.03.2019 and upto 31.03.2024 in respect of 70% of the total generated capacity for a period of 12 years from the date of commissioning. Free power to be provided as per the agreement with the State Government and that provided for Local Area Development Fund (LADF), shall not be included within this limit of 70% of the total generated capacity.

Provided also that hydro power imported from outside India shall not be considered for meeting HPO.

- b. Further to facilitate compliance of HPO, Hydro Energy Certificate mechanism as available to be utilised by obligated entities.
- c. HPO liability of the State/Discom could be met out of the free power being provided to the State from LHPs commissioned after 08.03.2019 as per agreement at that point of time excluding the contribution towards Local Area Development Fund (LADF), if consumed, within the State/Discoms. Free power (not that contributed for Local Area Development) only to the extent of HPO liability of the State/Discom shall be eligible for HPO benefit.
- d. If the above-mentioned minimum quantum of power purchase either from Solar or Wind or Large Hydro Power Plant of capacity above 25 MW and commissioned after 8th March, 2019 as per MoP, Government of India Notification No. F. No. 15/2/2016-H-I (Pt.) dated 08.03.2019 or Others (including Biomass, Bagasse & Bio-fuel based cogeneration, MSW and Small/Mini/Micro Hydro) is not available in a particular year, then in such cases, additional renewable energy available either from Solar or Wind or Large Hydro Power Plant of capacity above 25 MW and commissioned after 8th March, 2019 as per MoP, Government of India Notification No. F. No. 15/2/2016-H-I (Pt.) dated 08.03.2019 or Others shall be utilised for fulfilment of RPO.

Provided further that the targets specified for Obligated Entities for FY 2024-25 shall be continued beyond for FY 2025-26 and onwards unless specified by the Commission separately.

Sd/-

ROOPWANT SINGH, IAS

Secretary

Gujarat Electricity Regulatory Commission

Gandhinagar, Gujarat

Place: Gandhinagar

Date: 08/04/2022.



GOVERNMENT OF INDIA
MINISTRY OF POWER

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National Electricity Policy

The Gazette of India

**EXTRAORDINARY
PART I - Section 1
PUBLISHED BY AUTHORITY
No...., New Delhi, Dated
Ministry of Power**

New Delhi,
Dated the 12th, February, 2005

RESOLUTION

No. 23/40/2004-R&R (Vol.II)

1.0 INTRODUCTION

1.1 In compliance with section 3 of the Electricity Act 2003 the Central Government hereby notifies the National Electricity Policy.

1.2 Electricity is an essential requirement for all facets of our life. It has been recognized as a basic human need. It is a critical infrastructure on which the socio-economic development of the country depends. Supply of electricity at reasonable rate to rural India is essential for its overall development. Equally important is availability of reliable and quality power at competitive rates to Indian industry to make it globally competitive and to enable it to exploit the tremendous potential of employment generation. Services sector has made significant contribution to the growth of our economy. Availability of quality supply of electricity is very crucial to sustained growth of this segment.

1.3 Recognizing that electricity is one of the key drivers for rapid economic growth and poverty alleviation, the nation has set itself the target of providing access to all households in next five years. As per Census 2001, about 44% of the households do not have access to electricity. Hence meeting the target of providing universal access is a daunting task requiring significant addition to generation capacity and expansion of the transmission and distribution network.

1.4 Indian Power sector is witnessing major changes. Growth of Power Sector in India since its Independence has been noteworthy. However, the demand for power has been outstripping the growth of availability. Substantial peak and energy shortages prevail in the country. This is due to inadequacies in generation, transmission & distribution as well as inefficient use of electricity. Very high level of technical and commercial losses and lack of commercial approach in management of

Annexure P-5

utilities has led to unsustainable financial operations. Cross-subsidies have risen to unsustainable levels. Inadequacies in distribution networks has been one of the major reasons for poor quality of supply.

1.5 Electricity industry is capital-intensive having long gestation period. Resources of power generation are unevenly dispersed across the country. Electricity is a commodity that can not be stored in the grid where demand and supply have to be continuously balanced. The widely distributed and rapidly increasing demand requirements of the country need to be met in an optimum manner.

1.6 Electricity Act, 2003 provides an enabling framework for accelerated and more efficient development of the power sector. The Act seeks to encourage competition with appropriate regulatory intervention. Competition is expected to yield efficiency gains and in turn result in availability of quality supply of electricity to consumers at competitive rates.

1.7 Section 3 (1) of the Electricity Act 2003 requires the Central Government to formulate, *inter alia*, the National Electricity Policy in consultation with Central Electricity Authority (CEA) and State Governments. The provision is quoted below:

"The Central Government shall, from time to time, prepare the National Electricity Policy and tariff policy, in consultation with the State Governments and the Authority for development of the power system based on optimal utilization of resources such as coal, natural gas, nuclear substances or materials, hydro and renewable sources of energy".

Section 3 (3) of the Act enables the Central Government to review or revise the National Electricity Policy from time to

time.

1.8 The National Electricity Policy aims at laying guidelines for accelerated development of the power sector, providing supply of electricity to all areas and protecting interests of consumers and other stakeholders keeping in view availability of energy resources, technology available to exploit these resources, economics of generation using different resources, and energy security issues.

1.9 The National Electricity Policy has been evolved in consultation with and taking into account views of the State Governments, Central Electricity Authority (CEA), Central Electricity Regulatory Commission (CERC) and other stakeholders.

2.0 AIMS & OBJECTIVES

The National Electricity Policy aims at achieving the following objectives:

- Access to Electricity - Available for all households in next five years
- Availability of Power - Demand to be fully met by 2012. Energy and peaking shortages to be overcome and adequate spinning reserve to be available.
- Supply of Reliable and Quality Power of specified standards in an efficient manner and at reasonable rates.
- Per capita availability of electricity to be increased to over 1000 units by 2012.
- Minimum lifeline consumption of 1 unit/household/day as a merit good by year 2012.
- Financial Turnaround and Commercial Viability of Electricity Sector.
- Protection of consumers' interests.

3. NATIONAL ELECTRICITY PLAN

3.1 Assessment of demand is an important pre-requisite for planning capacity addition. Section 3 (4) of the Act requires the Central Electricity Authority (CEA) to frame a National Electricity Plan once in five years and revise the same from time to time in accordance with the National Electricity Policy. Also, section 73 (a) provides that formulation of short-term and perspective plans for development of the electricity system and coordinating the activities of various planning agencies for the optimal utilization of resources to subserve the interests of the national economy shall be one of the functions of the CEA. The Plan prepared by CEA and approved by the Central Government can be used by prospective generating companies, transmission utilities and transmission/distribution licensees as reference document.

3.2 Accordingly, the CEA shall prepare short-term and perspective plan. The National Electricity Plan would be for a short-term framework of five years while giving a 15 year perspective and would include:

- Short-term and long term demand forecast for different regions;
- Suggested areas/locations for capacity additions in generation and transmission keeping in view the economics of generation and transmission, losses in the system, load centre requirements, grid stability, security of supply, quality of power including voltage profile etc. and environmental considerations including rehabilitation and resettlement;
- Integration of such possible locations with transmission system and development of national grid including type of transmission systems and requirement of redundancies; and
- Different technologies available for efficient generation, transmission and distribution.
- Fuel choices based on economy, energy security and environmental considerations.

3.3 While evolving the National Electricity Plan, CEA will consult all the stakeholders including state governments and the state governments would, at state level, undertake this exercise in coordination with stakeholders including distribution licensees and STUs. While conducting studies periodically to assess short-term and long-term demand, projections made by distribution utilities would be given due weightage. CEA will also interact with institutions and agencies having economic expertise, particularly in the field of demand forecasting. Projected growth rates for different sectors of the economy will also be taken into account in the exercise of demand forecasting.

3.4 The National Electricity Plan for the ongoing 10th Plan period and 11th Plan and perspective Plan for the 10th, 11th & 12th Plan periods would be prepared and notified after reviewing and revising the existing Power Plan prepared by CEA. This will be done within six months.

4.0 ISSUES ADDRESSED

The policy seeks to address the following issues:

- Rural Electrification
- Generation
- Transmission
- Distribution
- Recovery of Cost of services & Targetted Subsidies.
- Technology Development and Research and Development (R&D)
- Competition aimed at Consumer Benefits
- Financing Power Sector Programmes Including Private Sector Participation.
- Energy Conservation
- Environmental Issues
- Training and Human Resource Development
- Cogeneration and Non-Conventional Energy Sources
- Protection of Consumer interests and Quality Standards

5.1 RURAL ELECTRIFICATION

5.1.1 The key development objective of the power sector is supply of electricity to all areas including rural areas as mandated in section 6 of the Electricity Act. Both the central government and state governments would jointly endeavour to achieve this objective at the earliest. Consumers, particularly those who are ready to pay a tariff which reflects efficient costs have the right to get uninterrupted twenty four hours supply of quality power. About 56% of rural households have not yet been electrified even though many of these households are willing to pay for electricity. Determined efforts should be made to ensure that the task of rural electrification for securing electricity access to all households and also ensuring that electricity reaches poor and marginal sections of the society at reasonable rates is completed within the next five years.

5.1.2 Reliable rural electrification system will aim at creating the following:

- (a) Rural Electrification Distribution Backbone (REDB) with at least one 33/11 kv (or 66/11 kv) substation in every Block and more if required as per load, networked and connected appropriately to the state transmission system
- (b) Emanating from REDB would be supply feeders and one distribution transformer at least in every village settlement.
- (c) Household Electrification from distribution transformer to connect every household on demand.
- (d) Wherever above is not feasible (it is neither cost effective nor the optimal solution to provide grid connectivity) decentralized distributed generation facilities together with local distribution network would be provided so that every household gets access to electricity. This would be done either through conventional or non-conventional methods of electricity generation whichever is more suitable and economical. Non-conventional sources of energy could be utilized even where grid connectivity exists provided it is found to be cost effective.
- (e) Development of infrastructure would also cater for requirement of agriculture & other economic activities including irrigation pump sets, small and medium industries, khadi and village industries, cold chain and social services like health and education.

5.1.3 Particular attention would be given in household electrification to dalit bastis, tribal areas and other weaker sections.

5.1.4 Rural Electrification Corporation of India, a Government of India enterprise will be the nodal agency at Central Government level to implement the programme for achieving the goal set by National Common Minimum Programme of giving access to electricity to all the households in next five years. Its role is being suitably enlarged to ensure timely implementation of rural electrification projects.

5.1.5 Targetted expansion in access to electricity for rural households in the desired timeframe can be achieved if the distribution licensees recover at least the cost of electricity and related O&M expenses from consumers, except for lifeline support to households below the poverty line who would need to be adequately subsidized. Subsidies should be properly targeted at the intended beneficiaries in the most efficient manner. Government recognizes the need for providing necessary capital subsidy and soft long-term debt finances for investment in rural electrification as this would reduce the cost of supply in rural areas. Adequate funds would need to be made available for the same through the Plan process. Also commensurate organizational support would need to be created for timely implementation. The Central Government would assist the State Governments in achieving this.

5.1.6 Necessary institutional framework would need to be put in place not only to ensure creation of rural electrification infrastructure but also to operate and maintain supply system for securing reliable power supply to consumers. Responsibility of operation & maintenance and cost recovery could be discharged by utilities through appropriate arrangements with Panchayats, local authorities, NGOs and other franchisees etc.

5.1.7 The gigantic task of rural electrification requires appropriate cooperation among various agencies of the State Governments, Central Government and participation of the community. Education and awareness programmes would be essential for creating demand for electricity and for achieving the objective of effective community participation.

5.2 GENERATION

5.2.1 Inadequacy of generation has characterized power sector operation in India. To provide availability of over 1000 units of per capita electricity by year 2012 it had been estimated that need based capacity addition of more than 1,00,000 MW would be required during the period 2002-12.

5.2.2 The Government of India has initiated several reform measures to create a favourable environment for addition of new generating capacity in the country. The Electricity Act 2003 has put in place a highly liberal framework for generation. There is no requirement of licensing for generation. The requirement of techno-economic clearance of CEA for thermal generation project is no longer there. For hydroelectric generation also, the limit of capital expenditure, above which concurrence of CEA is required, would be raised suitably from the present level. Captive generation has been freed from all controls.

5.2.3 In order to fully meet both energy and peak demand by 2012, there is a need to create adequate reserve capacity margin. In addition to enhancing the overall availability of installed capacity to 85%, a spinning reserve of at least 5%, at national level, would need to be created to ensure grid security and quality and reliability of power supply.

5.2.4 The progress of implementation of capacity addition plans and growth of demand would need to be constantly monitored and necessary adjustments made from time to time. In creating new generation capacities, appropriate technology may be considered keeping in view the likely widening of the difference between peak demand and the base load.

Hydro Generation

5.2.5 Hydroelectricity is a clean and renewable source of energy. Maximum emphasis would be laid on the full development of the feasible hydro potential in the country. The 50,000 MW hydro initiative has been already launched and is being vigorously pursued with DPRs for projects of 33,000 MW capacity already under preparation.

5.2.6 Harnessing hydro potential speedily will also facilitate economic development of States, particularly North-Eastern States, Sikkim, Uttaranchal, Himachal Pradesh and J&K, since a large proportion of our hydro power potential is located in these States. The States with hydro potential need to focus on the full development of these potentials at the earliest.

5.2.7 Hydel projects call for comparatively larger capital investment. Therefore, debt financing of longer tenure would need to be made available for hydro projects. Central Government is committed to policies that ensure financing of viable hydro projects.

5.2.8 State Governments need to review procedures for land acquisition, and other approvals/clearances for speedy implementation of hydroelectric projects.

5.2.9 The Central Government will support the State Governments for expeditious development of their hydroelectric projects by offering services of Central Public Sector Undertakings like National Hydroelectric Power Corporation (NHPC).

5.2.10 Proper implementation of National Policy on Rehabilitation and Resettlement (R&R) would be essential in this regard so as to ensure that the concerns of project-affected families are addressed adequately.

5.2.11 Adequate safeguards for environmental protection with suitable mechanism for monitoring of implementation of Environmental Action Plan and R&R Schemes will be put in place.

Thermal Generation

5.2.12 Even with full development of the feasible hydro potential in the country, coal would necessarily continue to remain the primary fuel for meeting future electricity demand.

5.2.13 Imported coal based thermal power stations, particularly at coastal locations, would be encouraged based on their economic viability. Use of low ash content coal would also help in reducing the problem of fly ash emissions.

5.2.14 Significant Lignite resources in the country are located in Tamil Nadu, Gujarat and Rajasthan and these should be increasingly utilized for power generation. Lignite mining technology needs to be improved to reduce costs.

5.2.15 Use of gas as a fuel for power generation would depend upon its availability at reasonable prices. Natural gas is being used in Gas Turbine /Combined Cycle Gas Turbine (GT/CCGT) stations, which currently accounts for about 10 % of total capacity. Power sector consumes about 40% of the total gas in the country. New power generation capacity could come up based on indigenous gas findings, which can emerge as a major source of power generation if prices are reasonable. A national gas grid covering various parts of the country could facilitate development of such capacities.

5.2.16 Imported LNG based power plants are also a potential source of electricity and the pace of their development would depend on their commercial viability. The existing power plants using liquid fuels should shift to use of Natural Gas/LNG at the earliest to reduce the cost of generation.

5.2.17 For thermal power, economics of generation and supply of electricity should be the basis for choice of fuel from among the options available. It would be economical for new generating stations to be located either near the fuel sources e.g. pithead locations or load centres.

5.2.18 Generating companies may enter into medium to long-term fuel supply agreements specially with respect to imported fuels for commercial viability and security of supply.

Nuclear Power

5.2.19 Nuclear power is an established source of energy to meet base load demand. Nuclear power plants are being set up at locations away from coalmines. Share of nuclear power in the overall capacity profile will need to be increased significantly. Economics of generation and resultant tariff will be, among others, important considerations. Public sector investments to create nuclear generation capacity will need to be stepped up. Private sector partnership would also be facilitated to see that not only targets are achieved but exceeded.

Non-conventional Energy Sources

5.2.20 Feasible potential of non-conventional energy resources, mainly small hydro, wind and biomass would also need to be exploited fully to create additional power generation capacity. With a

view to increase the overall share of non-conventional energy sources in the electricity mix, efforts will be made to encourage private sector participation through suitable promotional measures.

Renovation and Modernization (R&M)

5.2.21 One of the major achievements of the power sector has been a significant increase in availability and plant load factor of thermal power stations specially over the last few years. Renovation and modernization for achieving higher efficiency levels needs to be pursued vigorously and all existing generation capacity should be brought to minimum acceptable standards. The Govt. of India is providing financial support for this purpose.

5.2.22 For projects performing below acceptable standards, R&M should be undertaken as per well-defined plans featuring necessary cost-benefit analysis. If economic operation does not appear feasible through R&M, then there may be no alternative to closure of such plants as the last resort.

5.2.23 In cases of plants with poor O&M record and persisting operational problems, alternative strategies including change of management may need to be considered so as to improve the efficiency to acceptable levels of these power stations.

Captive Generation

5.2.24 The liberal provision in the Electricity Act, 2003 with respect to setting up of captive power plant has been made with a view to not only securing reliable, quality and cost effective power but also to facilitate creation of employment opportunities through speedy and efficient growth of industry.

5.2.25 The provision relating to captive power plants to be set up by group of consumers is primarily aimed at enabling small and medium industries or other consumers that may not individually be in a position to set up plant of optimal size in a cost effective manner. It needs to be noted that efficient expansion of small and medium industries across the country would lead to creation of enormous employment opportunities.

5.2.26 A large number of captive and standby generating stations in India have surplus capacity that could be supplied to the grid continuously or during certain time periods. These plants offer a sizeable and potentially competitive capacity that could be harnessed for meeting demand for power. Under the Act, captive generators have access to licensees and would get access to consumers who are allowed open access. Grid inter-connections for captive generators shall be facilitated as per section 30 of the Act. This should be done on priority basis to enable captive generation to become available as distributed generation along the grid. Towards this end, non-conventional energy sources including co-generation could also play a role. Appropriate commercial arrangements would need to be instituted between licensees and the captive generators for harnessing of spare capacity energy from captive power plants. The appropriate Regulatory Commission shall exercise regulatory oversight on such commercial arrangements between captive generators and licensees and determine tariffs when a licensee is the off-taker of power from captive plant.

5.3 TRANSMISSION

5.3.1 The Transmission System requires adequate and timely investments and also efficient and coordinated action to develop a robust and integrated power system for the country.

5.3.2 Keeping in view the massive increase planned in generation and also for development of power market, there is need for adequately augmenting transmission capacity. While planning new generation capacities, requirement of associated transmission capacity would need to be worked

out simultaneously in order to avoid mismatch between generation capacity and transmission facilities. The policy emphasizes the following to meet the above objective:

- The Central Government would facilitate the continued development of the National Grid for providing adequate infrastructure for inter-state transmission of power and to ensure that underutilized generation capacity is facilitated to generate electricity for its transmission from surplus regions to deficit regions.
- The Central Transmission Utility (CTU) and State Transmission Utility (STU) have the key responsibility of network planning and development based on the National Electricity Plan in coordination with all concerned agencies as provided in the Act. The CTU is responsible for the national and regional transmission system planning and development. The STU is responsible for planning and development of the intra-state transmission system. The CTU would need to coordinate with the STUs for achievement of the shared objective of eliminating transmission constraints in cost effective manner.
- Network expansion should be planned and implemented keeping in view the anticipated transmission needs that would be incident on the system in the open access regime. Prior agreement with the beneficiaries would not be a pre-condition for network expansion. CTU/STU should undertake network expansion after identifying the requirements in consultation with stakeholders and taking up the execution after due regulatory approvals.
- Structured information dissemination and disclosure procedures should be developed by the CTU and STUs to ensure that all stakeholders are aware of the status of generation and transmission projects and plans. These should form a part of the overall planning procedures.
- The State Regulatory Commissions who have not yet notified the grid code under the Electricity Act 2003 should notify the same not later than September 2005.

5.3.3 Open access in transmission has been introduced to promote competition amongst the generating companies who can now sell to different distribution licensees across the country. This should lead to availability of cheaper power. The Act mandates non-discriminatory open access in transmission from the very beginning. When open access to distribution networks is introduced by the respective State Commissions for enabling bulk consumers to buy directly from competing generators, competition in the market would increase the availability of cheaper and reliable power supply. The Regulatory Commissions need to provide facilitative framework for non-discriminatory open access. This requires load dispatch facilities with state-of-the art communication and data acquisition capability on a real time basis. While this is the case currently at the regional load dispatch centers, appropriate State Commissions must ensure that matching facilities with technology upgrades are provided at the State level, where necessary and realized not later than June 2006.

5.3.4 The Act prohibits the State transmission utilities/transmission licensees from engaging in trading in electricity. Power purchase agreements (PPAs) with the generating companies would need to be suitably assigned to the Distribution Companies, subject to mutual agreement. To the extent necessary, such assignments can be done in a manner to take care of different load profiles of the Distribution Companies. Non-discriminatory open access shall be provided to competing generators supplying power to licensees upon payment of transmission charge to be determined by the appropriate Commission. The appropriate Commissions shall establish such transmission charges no later than June 2005.

5.3.5 To facilitate orderly growth and development of the power sector and also for secure and reliable operation of the grid, adequate margins in transmission system should be created. The transmission capacity would be planned and built to cater to both the redundancy levels and margins keeping in view international standards and practices. A well planned and strong transmission system will ensure not only optimal utilization of transmission capacities but also of generation facilities and would facilitate achieving ultimate objective of cost effective delivery of power. To facilitate cost effective transmission of power across the region, a national transmission

tariff framework needs to be implemented by CERC. The tariff mechanism would be sensitive to distance, direction and related to quantum of flow. As far as possible, consistency needs to be maintained in transmission pricing framework in inter-State and intra-State systems. Further it should be ensured that the present network deficiencies do not result in unreasonable transmission loss compensation requirements.

5.3.6 The necessary regulatory framework for providing non-discriminatory open access in transmission as mandated in the Electricity Act 2003 is essential for signalling efficient choice in locating generation capacity and for encouraging trading in electricity for optimum utilization of generation resources and consequently for reducing the cost of supply.

5.3.7 The spirit of the provisions of the Act is to ensure independent system operation through NLDC, RLDCs and SLDCs. These dispatch centers, as per the provisions of the Act, are to be operated by a Government company or authority as notified by the appropriate Government. However, till such time these agencies/authorities are established the Act mandates that the CTU or STU, as the case may be, shall operate the RLDCs or SLDC. The arrangement of CTU operating the RLDCs would be reviewed by the Central Government based on experience of working with the existing arrangement. A view on this aspect would be taken by the Central Government by December 2005.

5.3.8 The Regional Power Committees as envisaged in section 2(55) would be constituted by the Government of India within two months with representation from various stakeholders.

5.3.9 The National Load Despatch Centre (NLDC) along with its constitution and functions as envisaged in Section 26 of the Electricity Act 2003 would be notified within three months. RLDCs and NLDC will have complete responsibility and commensurate authority for smooth operation of the grid irrespective of the ownership of the transmission system, be it under CPSUs, State Utility or private sector.

5.3.10 Special mechanisms would be created to encourage private investment in transmission sector so that sufficient investments are made for achieving the objective of demand to be fully met by 2012.

5.4 DISTRIBUTION

5.4.1 Distribution is the most critical segment of the electricity business chain. The real challenge of reforms in the power sector lies in efficient management of the distribution sector.

5.4.2 The Act provides for a robust regulatory framework for distribution licensees to safeguard consumer interests. It also creates a competitive framework for the distribution business, offering options to consumers, through the concepts of open access and multiple licensees in the same area of supply.

5.4.3 For achieving efficiency gains proper restructuring of distribution utilities is essential. Adequate transition financing support would also be necessary for these utilities. Such support should be arranged linked to attainment of predetermined efficiency improvements and reduction in cash losses and putting in place appropriate governance structure for insulating the service providers from extraneous interference while at the same time ensuring transparency and accountability. For ensuring financial viability and sustainability, State Governments would need to restructure the liabilities of the State Electricity Boards to ensure that the successor companies are not burdened with past liabilities. The Central Government would also assist the States, which develop a clear roadmap for turnaround, in arranging transition financing from various sources which shall be linked to predetermined improvements and efficiency gains aimed at attaining financial viability and also putting in place appropriate governance structures.

5.4.4 Conducive business environment in terms of adequate returns and suitable transitional model with predetermined improvements in efficiency parameters in distribution business would be necessary for facilitating funding and attracting investments in distribution. Multi-Year Tariff (MYT) framework is an important structural incentive to minimize risks for utilities and consumers, promote efficiency and rapid reduction of system losses. It would serve public interest through economic efficiency and improved service quality. It would also bring greater predictability to consumer tariffs by restricting tariff adjustments to known indicators such as power purchase prices and inflation indices. Private sector participation in distribution needs to be encouraged for achieving the requisite reduction in transmission and distribution losses and improving the quality of service to the consumers.

5.4.5 The Electricity Act 2003 enables competing generating companies and trading licensees, besides the area distribution licensees, to sell electricity to consumers when open access in distribution is introduced by the State Electricity Regulatory Commissions. As required by the Act, the SERCs shall notify regulations by June 2005 that would enable open access to distribution networks in terms of sub-section 2 of section 42 which stipulates that such open access would be allowed, not later than five years from 27th January 2004 to consumers who require a supply of electricity where the maximum power to be made available at any time exceeds one mega watt. Section 49 of the Act provides that such consumers who have been allowed open access under section 42 may enter into agreement with any person for supply of electricity on such terms and conditions, including tariff, as may be agreed upon by them. While making regulations for open access in distribution, the SERCs will also determine wheeling charges and cross-subsidy surcharge as required under section 42 of the Act.

5.4.6 A time-bound programme should be drawn up by the State Electricity Regulatory Commissions (SERC) for segregation of technical and commercial losses through energy audits. Energy accounting and declaration of its results in each defined unit, as determined by SERCs, should be mandatory not later than March 2007. An action plan for reduction of the losses with adequate investments and suitable improvements in governance should be drawn up. Standards for reliability and quality of supply as well as for loss levels shall also be specified, from time to time, so as to bring these in line with international practices by year 2012.

5.4.7 One of the key provisions of the Act on competition in distribution is the concept of multiple licensees in the same area of supply through their independent distribution systems. State Governments have full flexibility in carving out distribution zones while restructuring the Government utilities. For grant of second and subsequent distribution licence within the area of an incumbent distribution licensee, a revenue district, a Municipal Council for a smaller urban area or a Municipal Corporation for a larger urban area as defined in the Article 243(Q) of Constitution of India (74th Amendment) may be considered as the minimum area. The Government of India would notify within three months, the requirements for compliance by applicant for second and subsequent distribution licence as envisaged in Section 14 of the Act. With a view to provide benefits of competition to all section of consumers, the second and subsequent licensee for distribution in the same area shall have obligation to supply to all consumers in accordance with provisions of section 43 of the Electricity Act 2003. The SERCs are required to regulate the tariff including connection charges to be recovered by a distribution licensee under the provisions of the Act. This will ensure that second distribution licensee does not resort to cherry picking by demanding unreasonable connection charges from consumers.

5.4.8 The Act mandates supply of electricity through a correct meter within a stipulated period. The Authority should develop regulations as required under Section 55 of the Act within three months.

5.4.9 The Act requires all consumers to be metered within two years. The SERCs may obtain from the Distribution Licensees their metering plans, approve these, and monitor the same. The SERCs should encourage use of pre-paid meters. In the first instance, TOD meters for large consumers

with a minimum load of one MVA are also to be encouraged. The SERCs should also put in place independent third-party meter testing arrangements.

5.4.10 Modern information technology systems may be implemented by the utilities on a priority basis, after considering cost and benefits, to facilitate creation of network information and customer data base which will help in management of load, improvement in quality, detection of theft and tampering, customer information and prompt and correct billing and collection. Special emphasis should be placed on consumer indexing and mapping in a time bound manner. Support is being provided for information technology based systems under the Accelerated Power Development and Reforms Programme (APDRP).

5.4.11 High Voltage Distribution System is an effective method for reduction of technical losses, prevention of theft, improved voltage profile and better consumer service. It should be promoted to reduce LT/HT ratio keeping in view the techno economic considerations.

5.4.12 SCADA and data management systems are useful for efficient working of Distribution Systems. A time bound programme for implementation of SCADA and data management system should be obtained from Distribution Licensees and approved by the SERCs keeping in view the techno economic considerations. Efforts should be made to install substation automation equipment in a phased manner.

5.4.13 The Act has provided for stringent measures against theft of electricity. The States and distribution utilities should ensure effective implementation of these provisions. The State Governments may set up Special Courts as envisaged in Section 153 of the Act.

5.5 RECOVERY OF COST OF SERVICES & TARGETTED SUBSIDIES

5.5.1 There is an urgent need for ensuring recovery of cost of service from consumers to make the power sector sustainable.

5.5.2 A minimum level of support may be required to make the electricity affordable for consumers of very poor category. Consumers below poverty line who consume below a specified level, say 30 units per month, may receive special support in terms of tariff which are cross-subsidized. Tariffs for such designated group of consumers will be at least 50 % of the average (overall) cost of supply. This provision will be further re-examined after five years.

5.5.3 Over the last few decades cross-subsidies have increased to unsustainable levels. Cross-subsidies hide inefficiencies and losses in operations. There is urgent need to correct this imbalance without giving tariff shock to consumers. The existing cross-subsidies for other categories of consumers would need to be reduced progressively and gradually.

5.5.4 The State Governments may give advance subsidy to the extent they consider appropriate in terms of section 65 of the Act in which case necessary budget provision would be required to be made in advance so that the utility does not suffer financial problems that may affect its operations. Efforts would be made to ensure that the subsidies reach the targeted beneficiaries in the most transparent and efficient way.

5.6 TECHNOLOGY DEVELOPMENT AND R&D

5.6.1 Effective utilization of all available resources for generation, transmission and distribution of electricity using efficient and cost effective technologies is of paramount importance. Operations and management of vast and complex power systems require coordination among the multiple agencies involved. Effective control of power system at state, regional and national level can be achieved only through use of Information Technology. Application of IT has great potential in reducing technical & commercial losses in distribution and providing consumer friendly services.

Integrated resource planning and demand side management would also require adopting state of the art technologies.

Special efforts would be made for research, development demonstration and commercialization of non-conventional energy systems. Such systems would need to meet international standards, specifications and performance parameters.

5.6.2 Efficient technologies, like super critical technology, IGCC etc and large size units would be gradually introduced for generation of electricity as their cost effectiveness is established.

Simultaneously, development and deployment of technologies for productive use of fly ash would be given priority and encouragement.

5.6.3 Similarly, cost effective technologies would require to be developed for high voltage power flows over long distances with minimum possible losses. Specific information technology tools need to be developed for meeting the requirements of the electricity industry including highly sophisticated control systems for complex generation and transmission operations, efficient distribution business and user friendly consumer interface.

5.6.4 The country has a strong research and development base in the electricity sector which would be further augmented. R&D activities would be further intensified and Missions will be constituted for achieving desired results in identified priority areas. A suitable funding mechanism would be evolved for promoting R&D in the Power Sector. Large power companies should set aside a portion of their profits for support to R&D.

5.7 COMPETITION AIMED AT CONSUMER BENEFITS

5.7.1 To promote market development, a part of new generating capacities, say 15% may be sold outside long-term PPAs. As the power markets develop, it would be feasible to finance projects with competitive generation costs outside the long-term power purchase agreement framework. In the coming years, a significant portion of the installed capacity of new generating stations could participate in competitive power markets. This will increase the depth of the power markets and provide alternatives for both generators and licensees/consumers and in long run would lead to reduction in tariff.

For achieving this, the policy underscores the following:-

- a. It is the function of the Central Electricity Regulatory Commission to issue license for inter-state trading which would include authorization for trading throughout the country.
- b. The ABT regime introduced by CERC at the national level has had a positive impact. It has also enabled a credible settlement mechanism for intra-day power transfers from licenses with surpluses to licenses experiencing deficits. SERCs are advised to introduce the ABT regime at the State level within one year.
- c. Captive generating plants should be permitted to sell electricity to licensees and consumers when they are allowed open access by SERCs under section 42 of the Act.
- d. Development of power market would need to be undertaken by the Appropriate Commission in consultation with all concerned.
- e. The Central Commission and the State Commissions are empowered to make regulations under section 178 and section 181 of the Act respectively. These regulations will ensure implementation of various provisions of the Act regarding encouragement to competition and also consumer protection. The Regulatory Commissions are advised to notify various regulations expeditiously.
- f. Enabling regulations for inter and intra State trading and also regulations on power exchange shall be notified by the appropriate Commissions within six months.

5.8 FINANCING POWER SECTOR PROGRAMMES INCLUDING PRIVATE SECTOR PARTICIPATION

5.8.1 To meet the objective of rapid economic growth and "power for all" including household electrification, it is estimated that an investment of the order of Rs.9,00,000 crores at 2002-03 price level would be required to finance generation, transmission, sub-transmission, distribution and rural electrification projects. Power being most crucial infrastructure, public sector investments, both at the Central Government and State Governments, will have to be stepped up. Considering the magnitude of the expansion of the sector required, a sizeable part of the investments will also need to be brought in from the private sector. The Act creates a conducive environment for investments in all segments of the industry, both for public sector and private sector, by removing barrier to entry in different segments. Section 63 of the Act provides for participation of suppliers on competitive basis in different segments which will further encourage private sector investment. Public service obligations like increasing access to electricity to rural households and small and marginal farmers have highest priority over public finances.

5.8.2 The public sector should be able to raise internal resources so as to at least meet the equity requirement of investments even after suitable gross budgetary support from the Government at the Centre and in the states in order to complete their on-going projects in a time-bound manner. Expansion of public sector investments would be dependent on the financial viability of the proposed projects. It would, therefore, be imperative that an appropriate surplus is generated through return on investments and, at the same time, depreciation reserve created so as to fully meet the debt service obligation. This will not only enable financial closure but also bankability of the project would be improved for expansion programmes, with the Central and State level public sector organizations, as also private sector projects, being in a position to fulfil their obligations toward equity funding and debt repayments.

5.8.3 Under sub-section (2) of Section 42 of the Act, a surcharge is to be levied by the respective State Commissions on consumers switching to alternate supplies under open access. This is to compensate the host distribution licensee serving such consumers who are permitted open access under section 42(2), for loss of the cross-subsidy element built into the tariff of such consumers. An additional surcharge may also be levied under sub-section (4) of Section 42 for meeting the fixed cost of the distribution licensee arising out of his obligation to supply in cases where consumers are allowed open access. The amount of surcharge and additional surcharge levied from consumers who are permitted open access should not become so onerous that it eliminates competition that is intended to be fostered in generation and supply of power directly to consumers through the provision of Open Access under Section 42(2) of the Act. Further it is essential that the Surcharge be reduced progressively in step with the reduction of cross-subsidies as foreseen in Section 42(2) of the Electricity Act 2003.

5.8.4 Capital is scarce. Private sector will have multiple options for investments. Return on investment will, therefore, need to be provided in a manner that the sector is able to attract adequate investments at par with, if not in preference to, investment opportunities in other sectors. This would obviously be based on a clear understanding and evaluation of opportunities and risks. An appropriate balance will have to be maintained between the interests of consumers and the need for investments.

5.8.5 All efforts will have to be made to improve the efficiency of operations in all the segments of the industry. Suitable performance norms of operations together with incentives and disincentives will need to be evolved along with appropriate arrangement for sharing the gains of efficient operations with the consumers. This will ensure protection of consumers' interests on the one hand and provide motivation for improving the efficiency of operations on the other.

5.8.6 Competition will bring significant benefits to consumers, in which case, it is competition which will determine the price rather than any cost plus exercise on the basis of operating norms and parameters. All efforts will need to be made to bring the power industry to this situation as early as possible, in the overall interest of consumers. Detailed guidelines for competitive bidding as stipulated in section 63 of the Act have been issued by the Central Government.

5.8.7 It will be necessary that all the generating companies, transmission licensees and distribution licensees receive due payments for effective discharge of their operational obligations as also for enabling them to make fresh investments needed for the expansion programmes. Financial viability of operations and businesses would, therefore, be essential for growth and development of the sector. Concerted efforts would be required for restoring the financial health of the sector. For this purpose, tariff rationalization would need to be ensured by the SERCs. This would also include differential pricing for base, intermediate and peak power.

5.8.8 Steps would also be taken to address the need for regulatory certainty based on independence of the regulatory commissions and transparency in their functioning to generate investor's confidence.

5.8.9 Role of private participation in generation, transmission and distribution would become increasingly critical in view of the rapidly growing investment needs of the sector. The Central Government and the State Governments need to develop workable and successful models for public private partnership. This would also enable leveraging private investment with the public sector finances. Mechanisms for continuous dialogue with industry for streamlining procedures for encouraging private participation in power sector need to be put in place.

Transmission & Distribution Losses

5.8.10 It would have to be clearly recognized that Power Sector will remain unviable until T&D losses are brought down significantly and rapidly. A large number of States have been reporting losses of over 40% in the recent years. By any standards, these are unsustainable and imply a steady decline of power sector operations. Continuation of the present level of losses would not only pose a threat to the power sector operations but also jeopardize the growth prospects of the economy as a whole. No reforms can succeed in the midst of such large pilferages on a continuing basis.

The State Governments would prepare a Five Year Plan with annual milestones to bring down these losses expeditiously. Community participation, effective enforcement, incentives for entities, staff and consumers, and technological upgradation should form part of campaign efforts for reducing these losses. The Central Government will provide incentive based assistance to States that are able to reduce losses as per agreed programmes.

5.9 ENERGY CONSERVATION

5.9.1 There is a significant potential of energy savings through energy efficiency and demand side management measures. In order to minimize the overall requirement, energy conservation and demand side management (DSM) is being accorded high priority. The Energy Conservation Act has been enacted and the Bureau of Energy Efficiency has been setup.

5.9.2 The potential number of installations where demand side management and energy conservation measures are to be carried out is very large. Bureau of Energy Efficiency (BEE) shall initiate action in this regard. BEE would also make available the estimated conservation and DSM potential, its staged implementation along with cost estimates for consideration in the planning process for National Electricity Plan.

5.9.3 Periodic energy audits have been made compulsory for power intensive industries under the Energy Conservation Act. Other industries may also be encouraged to adopt energy audits and energy conservation measures. Energy conservation measures shall be adopted in all Government buildings for which saving potential has been estimated to be about 30% energy. Solar water heating systems and solar passive architecture can contribute significantly to this effort.

5.9.4 In the field of energy conservation initial approach would be voluntary and self-regulating with emphasis on labelling of appliances. Gradually as awareness increases, a more regulatory approach of setting standards would be followed.

5.9.5 In the agriculture sector, the pump sets and the water delivery system engineered for high efficiency would be promoted. In the industrial sector, energy efficient technologies should be used and energy audits carried out to indicate scope for energy conservation measures. Motors and drive system are the major source of high consumption in Agricultural and Industrial Sector. These need to be addressed. Energy efficient lighting technologies should also be adopted in industries, commercial and domestic establishments.

5.9.6 In order to reduce the requirements for capacity additions, the difference between electrical power demand during peak periods and off-peak periods would have to be reduced. Suitable load management techniques should be adopted for this purpose. Differential tariff structure for peak and off peak supply and metering arrangements (Time of Day metering) should be conducive to load management objectives. Regulatory Commissions should ensure adherence to energy efficiency standards by utilities.

5.9.7 For effective implementation of energy conservation measures, role of Energy Service Companies would be enlarged. Steps would be taken to encourage and incentivise emergence of such companies.

5.9.8 A national campaign for bringing about awareness about energy conservation would be essential to achieve efficient consumption of electricity.

5.9.9. A National Action Plan has been developed. Progress on all the proposed measures will be monitored with reference to the specific plans of action.

5.10 ENVIRONMENTAL ISSUES

5.10.1 Environmental concerns would be suitably addressed through appropriate advance action by way of comprehensive Environmental Impact Assessment and implementation of Environment Action Plan (EAP).

5.10.2 Steps would be taken for coordinating the efforts for streamlining the procedures in regard to grant of environmental clearances including setting up of 'Land Bank' and 'Forest Bank'.

5.10.3 Appropriate catchment area treatment for hydro projects would also be ensured and monitored.

5.10.4 Setting up of coal washeries will be encouraged. Suitable steps would also be taken so that utilization of fly ash is ensured as per environmental guidelines.

5.10.5 Setting up of municipal solid waste energy projects in urban areas and recovery of energy from industrial effluents will also be encouraged with a view to reducing environmental pollution apart from generating additional energy.

5.10.6 Full compliance with prescribed environmental norms and standards must be achieved in operations of all generating plants.

5.11 TRAINING AND HUMAN RESOURCE DEVELOPMENT

In the new reforms framework ushered by Electricity Act 2003, it is particularly important that the electricity industry has access to properly trained human resource. Therefore, concerted action would be taken for augmenting training infrastructure so that adequate well-trained human resource is made available as per the need of the industry. Special attention would need to be paid by the

industry for establishing training infrastructure in the field of electricity distribution, regulation, trading and power markets. Efforts should be made so that personnel of electricity supply industry both in the private and public sector become more cost-conscious and consumer-friendly.

5.12 COGENERATION AND NON-CONVENTIONAL ENERGY SOURCES

5.12.1 Non-conventional sources of energy being the most environment friendly there is an urgent need to promote generation of electricity based on such sources of energy. For this purpose, efforts need to be made to reduce the capital cost of projects based on non-conventional and renewable sources of energy. Cost of energy can also be reduced by promoting competition within such projects. At the same time, adequate promotional measures would also have to be taken for development of technologies and a sustained growth of these sources.

5.12.2 The Electricity Act 2003 provides that co-generation and generation of electricity from non-conventional sources would 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. Such percentage for purchase of power from non-conventional sources should be made applicable for the tariffs to be determined by the SERCs at the earliest. Progressively the share of electricity from non-conventional sources would need to be increased as prescribed by State Electricity Regulatory Commissions. Such purchase by distribution companies shall be through competitive bidding process. Considering the fact that it will take some time before non-conventional technologies compete, in terms of cost, with conventional sources, the Commission may determine an appropriate differential in prices to promote these technologies.

5.12.3 Industries in which both process heat and electricity are needed are well suited for cogeneration of electricity. A significant potential for cogeneration exists in the country, particularly in the sugar industry. SERCs may promote arrangements between the co-generator and the concerned distribution licensee for purchase of surplus power from such plants. Cogeneration system also needs to be encouraged in the overall interest of energy efficiency and also grid stability.

5.13 PROTECTION OF CONSUMER INTERESTS AND QUALITY STANDARDS

5.13.1 Appropriate Commission should regulate utilities based on pre-determined indices on quality of power supply. Parameters should include, amongst others, frequency and duration of interruption, voltage parameters, harmonics, transformer failure rates, waiting time for restoration of supply, percentage defective meters and waiting list of new connections. The Appropriate Commissions would specify expected standards of performance.

5.13.2 Reliability Index (RI) of supply of power to consumers should be indicated by the distribution licensee. A road map for declaration of RI for all cities and towns up to the District Headquarter towns as also for rural areas, should be drawn by up SERCs. The data of RI should be compiled and published by CEA.

5.13.3 It is advised that all State Commissions should formulate the guidelines regarding setting up of grievance redressal forum by the licensees as also the regulations regarding the Ombudsman and also appoint/designate the Ombudsman within six months.

5.13.4 The Central Government, the State Governments and Electricity Regulatory Commissions should facilitate capacity building of consumer groups and their effective representation before the Regulatory Commissions. This will enhance the efficacy of regulatory process.

6.0 COORDINATED DEVELOPMENT

6.1 Electricity being a concurrent subject, a well-coordinated approach would be necessary for development of the power sector. This is essential for the attainment of the objective of providing electricity-access to all households in next five years and providing reliable uninterrupted quality power supply to all consumers. The State Governments have a major role, particularly in creation of generation capacity, state level transmission and distribution. The Central Government would assist the States in the attainment of this objective. It would be playing a supportive role in fresh capacity addition and a major role in development of the National Grid. The State Governments need to ensure the success of reforms and restoration of financial health in distribution, which alone can enable the creation of requisite generation capacity. The Regulatory Commissions have the responsibility of ensuring that the regulatory processes facilitate the attainment of this objective. They also have a developmental role whose fulfillment would need a less formal and a consultative process.

The Electricity Act, 2003 also provides for mechanisms like "Coordination forum" and "Advisory Committees" to facilitate consultative process. The Act also requires the Regulatory Commissions to ensure transparency in exercise of their powers and in discharge of their functions. This in no way means that the Regulatory Commissions should follow formal judicial approach. In fact, quick disposal of matters would require an approach involving consultations with stakeholders.

6.2 Under the Act, the Regulatory Commissions are required to perform wide-ranging responsibilities. The appropriate Governments need to take steps to attract regulatory personnel with required background. The Govt. of India would promote the institutional capability to provide training to raise regulatory capacity in terms of the required expertise and skill sets. The appropriate Governments should provide financial autonomy to the Regulatory Commissions. The Act provides that the appropriate Government shall constitute a Fund under section 99 or section 103 of the Act, as the case may be, to be called as Regulatory Commission Fund. The State Governments are advised to establish this Fund expeditiously.

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Additional Secretary to the Government of India

Source URL: <https://powermin.nic.in/en/content/national-electricity-policy>

Annexure P-6

The Gazette of India

EXTRAORDINARY
PART I - Section 1
PUBLISHED BY AUTHORITY
Ministry of Power

New Delhi,
Dated the 6th January, 2006

RESOLUTION

No.23/2/2005-R&R(Vol.III)

TARIFF POLICY

1.0 INTRODUCTION

- 1.1. In compliance with section 3 of the Electricity Act 2003 the Central Government hereby notifies the Tariff policy in continuation of the National Electricity Policy (NEP) notified on 12th February 2005.
- 1.2. The National Electricity Policy has set the goal of adding new generation capacity of more than one lakh MW during the 10th and 11th Plan periods to have per capita availability of over 1000 units of electricity per year and to not only eliminate energy and peaking shortages but to also have a spinning reserve of 5% in the system. Development of the power sector has also to meet the challenge of providing access for electricity to all households in next five years.
- 1.3. It is therefore essential to attract adequate investments in the power sector by providing appropriate return on investment as budgetary resources of the Central and State Governments are incapable of providing the requisite funds. It is equally necessary to ensure availability of electricity to different categories of consumers at reasonable rates for achieving the objectives of rapid economic development of the country and improvement in the living standards of the people.
- 1.4. Balancing the requirement of attracting adequate investments to the sector and that of ensuring reasonability of user charges for the consumers is the critical challenge for the regulatory process. Accelerated development of the power sector and its ability to attract necessary investments calls for, inter alia, consistent regulatory approach across the country. Consistency in

approach becomes all the more necessary considering the large number of States and the diversities involved.

2.0 LEGAL POSITION

- 2.1 Section 3 (1) of the Electricity Act 2003 empowers the Central Government to formulate the tariff policy. Section 3 (3) of the Act enables the Central Government to review or revise the tariff policy from time to time.
- 2.2 The Act also requires that the Central Electricity Regulatory Commission (CERC) and State Electricity Regulatory Commissions (SERCs) shall be guided by the tariff policy in discharging their functions including framing the regulations under section 61 of the Act.
- 2.3 Section 61 of the Act provides that Regulatory Commissions shall be guided by the principles and methodologies specified by the Central Commission for determination of tariff applicable to generating companies and transmission licensees.
- 2.4 The Forum of Regulators has been constituted by the Central Government under the provisions of the Act which would, *inter alia*, facilitate consistency in approach specially in the area of distribution.

3.0 EVOLUTION OF THE POLICY

The tariff policy has been evolved in consultation with the State Governments and the Central Electricity Authority (CEA) and keeping in view the advice of the Central Electricity Regulatory Commission and suggestions of various stakeholders.

4.0 OBJECTIVES OF THE POLICY

The objectives of this tariff policy are to:

- (a) Ensure availability of electricity to consumers at reasonable and competitive rates;
- (b) Ensure financial viability of the sector and attract investments;
- (c) Promote transparency, consistency and predictability in regulatory approaches across jurisdictions and minimise perceptions of regulatory risks;
- (d) Promote competition, efficiency in operations and improvement in quality of supply.

5.0 GENERAL APPROACH TO TARIFF

- 5.1 Introducing competition in different segments of the electricity industry is one of the key features of the Electricity Act, 2003. Competition will lead

to significant benefits to consumers through reduction in capital costs and also efficiency of operations. It will also facilitate the price to be determined competitively. The Central Government has already issued detailed guidelines for tariff based bidding process for procurement of electricity by distribution licensees for medium or long-term period vide gazette notification dated 19th January, 2005.

All future requirement of power should be procured competitively by distribution licensees except in cases of expansion of existing projects or where there is a State controlled/owned company as an identified developer and where regulators will need to resort to tariff determination based on norms provided that expansion of generating capacity by private developers for this purpose would be restricted to one time addition of not more than 50% of the existing capacity.

Even for the Public Sector projects, tariff of all new generation and transmission projects should be decided on the basis of competitive bidding after a period of five years or when the Regulatory Commission is satisfied that the situation is ripe to introduce such competition.

5.2 The real benefits of competition would be available only with the emergence of appropriate market conditions. Shortages of power supply will need to be overcome. Multiple players will enhance the quality of service through competition. All efforts will need to be made to bring power industry to this situation as early as possible in the overall interests of consumers. Transmission and distribution, i.e. the wires business is internationally recognized as having the characteristics of a natural monopoly where there are inherent difficulties in going beyond regulated returns on the basis of scrutiny of costs.

5.3 Tariff policy lays down following framework for performance based cost of service regulation in respect of aspects common to generation, transmission as well as distribution. These shall not apply to competitively bid projects as referred to in para 6.1 and para 7.1 (6). Sector specific aspects are dealt with in subsequent sections.

a) **Return on Investment**

Balance needs to be maintained between the interests of consumers and the need for investments while laying down rate of return. Return should attract investments at par with, if not in preference to, other sectors so that the electricity sector is able to create adequate capacity. The rate of return should be such that it allows generation of reasonable surplus for growth of the sector.

The Central Commission would notify, from time to time, the rate of return on equity for generation and transmission projects keeping in view the assessment of overall risk and the prevalent cost of capital which shall be followed by the SERCs also. The rate of return notified by CERC for transmission may be adopted by the State Electricity Regulatory Commissions (SERCs) for distribution with appropriate modification taking into view the higher risks involved. For uniform approach in this matter, it would be desirable to arrive at a consensus through the Forum of Regulators.

While allowing the total capital cost of the project, the Appropriate Commission would ensure that these are reasonable and to achieve this objective, requisite benchmarks on capital costs should be evolved by the Regulatory Commissions.

Explanation: For the purposes of return on equity, any cash resources available to the company from its share premium account or from its internal resources that are used to fund the equity commitments of the project under consideration should be treated as equity subject to limitations contained in (b) below.

The Central Commission may adopt the alternative approach of regulating through return on capital.

The Central Commission may adopt either Return on Equity approach or Return on Capital approach whichever is considered better in the interest of the consumers.

The State Commission may consider 'distribution margin' as basis for allowing returns in distribution business at an appropriate time. The Forum of Regulators should evolve a comprehensive approach on "distribution margin" within one year. The considerations while preparing such an approach would, inter-alia, include issues such as reduction in Aggregate Technical and Commercial losses, improving the standards of performance and reduction in cost of supply.

b) Equity Norms

For financing of future capital cost of projects, a Debt : Equity ratio of 70:30 should be adopted. Promoters would be free to have higher quantum of equity investments. The equity in excess of this norm should be treated as loans advanced at the weighted average rate of interest and for a weighted average tenor of the long term debt component of the project after ascertaining the reasonableness of the interest rates and taking into account the effect of debt restructuring done, if any. In case of equity below the normative level, the actual equity would be used for determination of Return on Equity in tariff computations.

c) Depreciation

The Central Commission may notify the rates of depreciation in respect of generation and transmission assets. The depreciation rates so notified would also be applicable for distribution with appropriate modification as may be evolved by the Forum of Regulators.

The rates of depreciation so notified would be applicable for the purpose of tariffs as well as accounting.

There should be no need for any advance against depreciation.

Benefit of reduced tariff after the assets have been fully depreciated should remain available to the consumers.

d) Cost of Debt

Structuring of debt, including its tenure, with a view to reducing the tariff should be encouraged. Savings in costs on account of subsequent restructuring of debt should be suitably incentivised by the Regulatory Commissions keeping in view the interests of the consumers.

e) Cost of Management of Foreign Exchange Risk

Foreign exchange variation risk shall not be a pass through. Appropriate costs of hedging and swapping to take care of foreign exchange variations should be allowed for debt obtained in foreign currencies. This provision would be relevant only for the projects where tariff has not been determined on the basis of competitive bids.

f) Operating Norms

Suitable performance norms of operations together with incentives and disincentives would need to be evolved along with appropriate arrangement for sharing the gains of efficient operations with the consumers. Except for the cases referred to in para 5.3 (h)(2), the operating parameters in tariffs should be at "normative levels" only and not at "lower of normative and actuals". This is essential to encourage better operating performance. The norms should be efficient, relatable to past performance, capable of achievement and progressively reflecting increased efficiencies and may also take into consideration the latest technological advancements, fuel, vintage of

equipments, nature of operations, level of service to be provided to consumers etc. Continued and proven inefficiency must be controlled and penalized.

The Central Commission would, in consultation with the Central Electricity Authority, notify operating norms from time to time for generation and transmission. The SERC would adopt these norms. In cases where operations have been much below the norms for many previous years, the SERCs may fix relaxed norms suitably and draw a transition path over the time for achieving the norms notified by the Central Commission.

Operating norms for distribution networks would be notified by the concerned SERCs. For uniformity of approach in determining such norms for distribution, the Forum of Regulators should evolve the approach including the guidelines for treatment of state specific distinctive features.

g) Renovation and Modernisation

Renovation and modernization (it shall not include periodic overhauls) for higher efficiency levels needs to be encouraged. A multi-year tariff (MYT) framework may be prescribed which should also cover capital investments necessary for renovation and modernization and an incentive framework to share the benefits of efficiency improvement between the utilities and the beneficiaries with reference to revised and specific performance norms to be fixed by the Appropriate Commission. Appropriate capital costs required for pre-determined efficiency gains and/or for sustenance of high level performance would need to be assessed by the Appropriate Commission.

(h) Multi Year Tariff

- 1) Section 61 of the Act states that the Appropriate Commission, for determining the terms and conditions for the determination of tariff, shall be guided inter-alia, by multi-year tariff principles. The MYT framework is to be adopted for any tariffs to be determined from April 1, 2006. The framework should feature a five-year control period. The initial control period may however be of 3 year duration for transmission and distribution if deemed necessary by the Regulatory Commission on account of data uncertainties and other practical considerations. In cases of lack of reliable data, the Appropriate Commission may state assumptions in MYT for first control period and a fresh control period may be started as and when more reliable data becomes available.
- 2) In cases where operations have been much below the norms for many previous years the initial starting point in determining the revenue requirement and the improvement trajectories should be recognized at “relaxed” levels and not the “desired” levels. Suitable benchmarking studies may be conducted to establish

the "desired" performance standards. Separate studies may be required for each utility to assess the capital expenditure necessary to meet the minimum service standards.

- 3) Once the revenue requirements are established at the beginning of the control period, the Regulatory Commission should focus on regulation of outputs and not the input cost elements. At the end of the control period, a comprehensive review of performance may be undertaken.
- 4) Uncontrollable costs should be recovered speedily to ensure that future consumers are not burdened with past costs. Uncontrollable costs would include (but not limited to) fuel costs, costs on account of inflation, taxes and cess, variations in power purchase unit costs including on account of hydro-thermal mix in case of adverse natural events.
- 5) Clear guidelines and regulations on information disclosure may be developed by the Regulatory Commissions. Section 62 (2) of the Act empowers the Appropriate Commission to require licensees to furnish separate details, as may be specified in respect of generation, transmission and distribution for determination of tariff.

(i) **Benefits under CDM**

Tariff fixation for all electricity projects (generation, transmission and distribution) that result in lower Green House Gas (GHG) emissions than the relevant base line should take into account the benefits obtained from the Clean Development Mechanism (CDM) into consideration, in a manner so as to provide adequate incentive to the project developers.

5.4 While it is recognized that the State Governments have the right to impose duties, taxes, cess on sale or consumption of electricity, these could potentially distort competition and optimal use of resources especially if such levies are used selectively and on a non-uniform basis.

In some cases, the duties etc. on consumption of electricity is linked to sources of generation (like captive generation) and the level of duties levied is much higher as compared to that being levied on the same category of consumers who draw power from grid. Such a distinction is invidious and inappropriate. The sole purpose of freely allowing captive generation is to enable industries to access reliable, quality and cost effective power. Particularly, the provisions relating to captive power plants which can be set up by group of consumers has been brought in recognition of the fact that efficient expansion of small and medium industries across the country will lead to faster economic growth and creation of larger employment opportunities.

For realizing the goal of making available electricity to consumers at reasonable and competitive prices, it is necessary that such duties are kept at reasonable level.

5.5 Though, as per the provisions of the Act, the outer limit to introduce open access in distribution is 27.1.2009, it would be desirable that, in whichever states the situation so permits, the Regulatory Commissions introduce such open access earlier than this deadline.

6.0 GENERATION

Accelerated growth of the generation capacity sector is essential to meet the estimated growth in demand. Adequacy of generation is also essential for efficient functioning of power markets. At the same time, it is to be ensured that new capacity addition should deliver electricity at most efficient rates to protect the interests of consumers. This policy stipulates the following for meeting these objectives.

6.1 Procurement of power

As stipulated in para 5.1, power procurement for future requirements should be through a transparent competitive bidding mechanism using the guidelines issued by the Central Government vide gazette notification dated 19th January, 2005. These guidelines provide for procurement of electricity separately for base load requirements and for peak load requirements. This would facilitate setting up of generation capacities specifically for meeting peak.

6.2 Tariff structuring and associated issues

(1) A two-part tariff structure should be adopted for all long term contracts to facilitate Merit Order dispatch. According to National Electricity Policy, the Availability Based Tariff (ABT) is to be introduced at State level by April 2006. This framework would be extended to generating stations (including grid connected captive plants of capacities as determined by the SERC). The Appropriate Commission may also introduce differential rates of fixed charges for peak and off peak hours for better management of load.

(2) Power Purchase Agreement should ensure adequate and bankable payment security arrangements to the Generating companies. In case of persisting default in spite of the available payment security mechanisms like letter of credit, escrow of cash flows etc. the generating companies may sell to other buyers.

- (3) In case of coal based generating stations, the cost of project will also include reasonable cost of setting up coal washeries, coal beneficiation system and dry ash handling & disposal system.

6.3 Harnessing captive generation

Captive generation is an important means to making competitive power available. Appropriate Commission should create an enabling environment that encourages captive power plants to be connected to the grid.

Such captive plants could inject surplus power into the grid subject to the same regulation as applicable to generating companies. Firm supplies may be bought from captive plants by distribution licensees using the guidelines issued by the Central Government under section 63 of the Act.

The prices should be differentiated for peak and off-peak supply and the tariff should include variable cost of generation at actual levels and reasonable compensation for capacity charges.

Alternatively, a frequency based real time mechanism can be used and the captive generators can be allowed to inject into the grid under the ABT mechanism.

Wheeling charges and other terms and conditions for implementation should be determined in advance by the respective State Commission, duly ensuring that the charges are reasonable and fair.

Grid connected captive plants could also supply power to non-captive users connected to the grid through available transmission facilities based on negotiated tariffs. Such sale of electricity would be subject to relevant regulations for open access.

6.4 Non-conventional sources of energy generation including Co-generation:

- (1) Pursuant to provisions of section 86(1)(e) of the Act, the Appropriate Commission shall fix a minimum percentage for purchase of energy from such sources taking into account availability of such resources in the region and its impact on retail tariffs. Such percentage for purchase of energy should be made applicable for the tariffs to be determined by the SERCs latest by April 1, 2006.

It will take some time before non-conventional technologies can compete with conventional sources in terms of cost of electricity. Therefore, procurement by distribution companies shall be done at preferential tariffs determined by the Appropriate Commission.

- (2) Such procurement by Distribution Licensees for future requirements shall be done, as far as possible, through competitive bidding process under Section 63 of the Act within suppliers offering energy from same type of non-conventional sources. In the long-term, these technologies would need to compete with other sources in terms of full costs.
- (3) The Central Commission should lay down guidelines within three months for pricing non-firm power, especially from non-conventional sources, to be followed in cases where such procurement is not through competitive bidding.

7.0 TRANSMISSION

The transmission system in the country consists of the regional networks, the inter-regional connections that carry electricity across the five regions, and the State networks. The national transmission network in India is presently under development. Development of the State networks has not been uniform and capacity in such networks needs to be augmented. These networks will play an important role in intra-State power flows and also in the regional and national flows. The tariff policy, insofar as transmission is concerned, seeks to achieve the following objectives:

- 1. Ensuring optimal development of the transmission network to promote efficient utilization of generation and transmission assets in the country;
- 2. Attracting the required investments in the transmission sector and providing adequate returns.

7.1 Transmission pricing

(1) A suitable transmission tariff framework for all inter-State transmission, including transmission of electricity across the territory of an intervening State as well as conveyance within the State which is incidental to such inter-state transmission, needs to be implemented with the objective of promoting effective utilization of all assets across the country and accelerated development of new transmission capacities that are required.

(2) The National Electricity Policy mandates that the national tariff framework implemented should be sensitive to distance, direction and related to quantum of power flow. This would be developed by CERC taking into consideration the advice of the CEA. Such tariff mechanism should be implemented by 1st April 2006.

(3) Transmission charges, under this framework, can be determined on MW per circuit kilometer basis, zonal postage stamp basis, or some other pragmatic variant, the ultimate objective being to get the transmission system users to share the total transmission cost in proportion to their respective utilization of the

transmission system. The overall tariff framework should be such as not to inhibit planned development/augmentation of the transmission system, but should discourage non-optimal transmission investment.

- (4) In view of the approach laid down by the NEP, prior agreement with the beneficiaries would not be a pre-condition for network expansion. CTU/STU should undertake network expansion after identifying the requirements in consonance with the National Electricity Plan and in consultation with stakeholders, and taking up the execution after due regulatory approvals.
- (5) The Central Commission would establish, within a period of one year, norms for capital and operating costs, operating standards and performance indicators for transmission lines at different voltage levels. Appropriate baseline studies may be commissioned to arrive at these norms.
- (6) Investment by transmission developer other than CTU/STU would be invited through competitive bids. The Central Government will issue guidelines in three months for bidding process for developing transmission capacities. The tariff of the projects to be developed by CTU/STU after the period of five years or when the Regulatory Commission is satisfied that the situation is right to introduce such competition (as referred to in para 5.1) would also be determined on the basis of competitive bidding.
- (7) After the implementation of the proposed framework for the inter-State transmission ,a similar approach should be implemented by SERCs in next two years for the intra-State transmission, duly considering factors like voltage, distance, direction and quantum of flow.
- (8) Metering compatible with the requirements of the proposed transmission tariff framework should be established on priority basis. The metering should be compatible with ABT requirements, which would also facilitate implementation of Time of Day (ToD) tariffs.

7.2 Approach to transmission loss allocation

- (1) Transactions should be charged on the basis of average losses arrived at after appropriately considering the distance and directional sensitivity, as applicable to relevant voltage level, on the transmission system. Based on the methodology laid down by the CERC in this regard for inter- state transmission, the Forum of Regulators may evolve a similar approach for intra-state transmission.

The loss framework should ensure that the loss compensation is reasonable and linked to applicable technical loss benchmarks. The benchmarks may be determined by the Appropriate Commission after considering advice of CEA.

It would be desirable to move to a system of loss compensation based on incremental losses as present deficiencies in transmission capacities are overcome through network expansion.

(2) The Appropriate Commission may require necessary studies to be conducted to establish the allowable level of system loss for the network configuration, and the capital expenditure required to augment the transmission system and reduce system losses. Since additional flows above a level of line loading leads to significantly higher losses, CTU/STU should ensure upgrading of transmission systems to avoid the situations of overloading. The Appropriate Commission should permit adequate capital investments in new assets for upgrading the transmission system.

7.3 Other issues in transmission

- (1) Financial incentives and disincentives should be implemented for the CTU and the STU around the key performance indicators (KPI) for these organisations. Such KPIs would include efficient network construction, system availability and loss reduction.
- (2) All available information should be shared with intending users by the CTU/STU and the load dispatch centers, particularly information on available transmission capacity and load flow studies.

8.0 DISTRIBUTION

Supply of reliable and quality power of specified standards in an efficient manner and at reasonable rates is one of the main objectives of the National Electricity Policy. The State Commission should determine and notify the standards of performance of licensees with respect to quality, continuity and reliability of service for all consumers. It is desirable that the Forum of Regulators determines the basic framework on service standards. A suitable transition framework could be provided for the licensees to reach the desired levels of service as quickly as possible. Penalties may be imposed on licensees in accordance with section 57 of the Act for failure to meet the standards.

Making the distribution segment of the industry efficient and solvent is the key to success of power sector reforms and provision of services of specified standards. Therefore, the Regulatory Commissions need to strike the right balance between the requirements of the commercial viability of distribution licensees and consumer interests. Loss making utilities need to be transformed into profitable ventures which can raise necessary resources from the capital markets to provide services of international standards to enable India to achieve its full growth potential.

Efficiency in operations should be encouraged. Gains of efficient operations with reference to normative parameters should be appropriately shared between consumers and licensees.

8.1 Implementation of Multi-Year Tariff (MYT) framework

- 1) This would minimise risks for utilities and consumers, promote efficiency and appropriate reduction of system losses and attract investments and would also bring greater predictability to consumer tariffs on the whole by restricting tariff adjustments to known indicators on power purchase prices and inflation indices. The framework should be applied for both public and private utilities.
- 2) The State Commissions should introduce mechanisms for sharing of excess profits and losses with the consumers as part of the overall MYT framework. In the first control period the incentives for the utilities may be asymmetric with the percentage of the excess profits being retained by the utility set at higher levels than the percentage of losses to be borne by the utility. This is necessary to accelerate performance improvement and reduction in losses and will be in the long term interest of consumers by way of lower tariffs.
- 3) As indicated in para 5.3 (h), the MYT framework implemented in the initial control period should have adequate flexibility to accommodate changes in the baselines consequent to metering being completed.
- 4) Licensees may have the flexibility of charging lower tariffs than approved by the State Commission if competitive conditions require so without having a claim on additional revenue requirement on this account in accordance with Section 62 of the Act .
- 5) At the beginning of the control period when the “actual” costs form the basis for future projections, there may be a large uncovered gap between required tariffs and the tariffs that are presently applicable. The gap should be fully met through tariff charges and through alternative means that could inter-alia include financial restructuring and transition financing.
- 6) Incumbent licensees should have the option of filing for separate revenue requirements and tariffs for an area where the State Commission has issued multiple distribution licenses, pursuant to the provisions of Section 14 of the Act read with para 5.4.7 of the National Electricity Policy.

- 7) Appropriate Commissions should initiate tariff determination and regulatory scrutiny on a suo moto basis in case the licensee does not initiate filings in time. It is desirable that requisite tariff changes come into effect from the date of commencement of each financial year and any gap on account of delay in filing should be on account of licensee.

8.2 Framework for revenue requirements and costs

8.2.1 The following aspects would need to be considered in determining tariffs:

- (1) All power purchase costs need to be considered legitimate unless it is established that the merit order principle has been violated or power has been purchased at unreasonable rates. The reduction of Aggregate Technical & Commercial (ATC) losses needs to be brought about but not by denying revenues required for power purchase for 24 hours supply and necessary and reasonable O&M and investment for system upgradation. Consumers, particularly those who are ready to pay a tariff which reflects efficient costs have the right to get uninterrupted 24 hours supply of quality power. Actual level of retail sales should be grossed up by normative level of T&D losses as indicated in MYT trajectory for allowing power purchase cost subject to justifiable power purchase mix variation (for example, more energy may be purchased from thermal generation in the event of poor rainfall) and fuel surcharge adjustment as per regulations of the SERC.
- (2) ATC loss reduction should be incentivised by linking returns in a MYT framework to an achievable trajectory. Greater transparency and nurturing of consumer groups would be efficacious. For government owned utilities improving governance to achieve ATC loss reduction is a more difficult and complex challenge for the SERCs. Prescription of a MYT dispensation with different levels of consumer tariffs in succeeding years linked to different ATC loss levels aimed at covering full costs could generate the requisite political will for effective action to reduce theft as the alternative would be stiffer tariff increases. Third party verification of energy audit results for different areas/localities could be used to impose area/locality specific surcharge for greater ATC loss levels and this in turn could generate local consensus for effective action for better governance. The SERCs may also encourage suitable local area based incentive and disincentive scheme for the staff of the utilities linked to reduction in losses.

The SERC shall undertake independent assessment of baseline data for various parameters for every distribution circle of the licensee and this exercise should be completed latest by March, 2007.

The SERC shall also institute a system of independent scrutiny of financial and technical data submitted by the licensees.

As the metering is completed upto appropriate level in the distribution network, latest by March, 2007, it should be possible to segregate technical losses. Accordingly technical loss reduction under MYT framework should then be treated as distinct from commercial loss reduction which require a different approach.

- (3) Section 65 of the Act provides that no direction of the State Government regarding grant of subsidy to consumers in the tariff determined by the State Commission shall be operative if the payment on account of subsidy as decided by the State Commission is not made to the utilities and the tariff fixed by the State Commission shall be applicable from the date of issue of orders by the Commission in this regard. The State Commissions should ensure compliance of this provision of law to ensure financial viability of the utilities. To ensure implementation of the provision of the law, the State Commission should determine the tariff initially, without considering the subsidy commitment by the State Government and subsidised tariff shall be arrived at thereafter considering the subsidy by the State Government for the respective categories of consumers.
- (4) Working capital should be allowed duly recognising the transition issues faced by the utilities such as progressive improvement in recovery of bills. Bad debts should be recognised as per policies developed and subject to the approval of the State Commission.
- (5) Pass through of past losses or profits should be allowed to the extent caused by uncontrollable factors. During the transition period controllable factors should be to the account of utilities and consumers in proportions determined under the MYT framework.
- (6) The contingency reserves should be drawn upon with prior approval of the State Commission only in the event of contingency conditions specified through regulations by the State Commission. The existing practice of providing for development reserves and tariff and dividend control reserves should be discontinued.

8.2.2. The facility of a regulatory asset has been adopted by some Regulatory Commissions in the past to limit tariff impact in a particular year. This should be done only as exception, and subject to the following guidelines:

- a. The circumstances should be clearly defined through regulations, and should only include natural causes or force majeure conditions. Under business as usual conditions, the opening balances of uncovered gap must be covered through transition financing arrangement or capital restructuring;
- b. Carrying cost of Regulatory Asset should be allowed to the utilities;
- c. Recovery of Regulatory Asset should be time-bound and within a period not exceeding three years at the most and preferably within control period;
- d. The use of the facility of Regulatory Asset should not be repetitive.
- e. In cases where regulatory asset is proposed to be adopted, it should be ensured that the return on equity should not become unreasonably low in any year so that the capability of the licensee to borrow is not adversely affected.

8.3 Tariff design : Linkage of tariffs to cost of service

It has been widely recognised that rational and economic pricing of electricity can be one of the major tools for energy conservation and sustainable use of ground water resources.

In terms of the Section 61 (g) of the Act, the Appropriate Commission shall be guided by the objective that the tariff progressively reflects the efficient and prudent cost of supply of electricity.

The State Governments can give subsidy to the extent they consider appropriate as per the provisions of section 65 of the Act. Direct subsidy is a better way to support the poorer categories of consumers than the mechanism of cross-subsidizing the tariff across the board. Subsidies should be targeted effectively and in transparent manner. As a substitute of cross-subsidies, the State Government has the option of raising resources through mechanism of electricity duty and giving direct subsidies to only needy consumers. This is a better way of targeting subsidies effectively.

Accordingly, the following principles would be adopted:

1. In accordance with the National Electricity Policy, consumers below poverty line who consume below a specified level, say 30 units per month, may receive a special support through cross subsidy. Tariffs for such designated group of consumers will be at least 50% of the average cost of supply. This provision will be re-examined after five years.

2. For achieving the objective that the tariff progressively reflects the cost of supply of electricity, the SERC would notify roadmap within six months with a target that latest by the end of year 2010-2011 tariffs are within $\pm 20\%$ of the average cost of supply. The road map would also have intermediate milestones, based on the approach of a gradual reduction in cross subsidy.

For example if the average cost of service is Rs 3 per unit, at the end of year 2010-2011 the tariff for the cross subsidised categories excluding those referred to in para 1 above should not be lower than Rs 2.40 per unit and that for any of the cross-subsidising categories should not go beyond Rs 3.60 per unit.

3. While fixing tariff for agricultural use, the imperatives of the need of using ground water resources in a sustainable manner would also need to be kept in mind in addition to the average cost of supply. Tariff for agricultural use may be set at different levels for different parts of a state depending of the condition of the ground water table to prevent excessive depletion of ground water. Section 62 (3) of the Act provides that geographical position of any area could be one of the criteria for tariff differentiation. A higher level of subsidy could be considered to support poorer farmers of the region where adverse ground water table condition requires larger quantity of electricity for irrigation purposes subject to suitable restrictions to ensure maintenance of ground water levels and sustainable ground water usage.

4. Extent of subsidy for different categories of consumers can be decided by the State Government keeping in view various relevant aspects. But provision of free electricity is not desirable as it encourages wasteful consumption of electricity besides, in most cases, lowering of water table in turn creating avoidable problem of water shortage for irrigation and drinking water for later generations. It is also likely to lead to rapid rise in demand of electricity putting severe strain on the distribution network thus adversely affecting the quality of supply of power. Therefore, it is necessary that reasonable level of user charges are levied. The subsidized rates of electricity should be permitted only up to a pre-identified level of consumption beyond which tariffs reflecting efficient cost of service should be charged from consumers. If the State Government wants to reimburse even part of this cost of

electricity to poor category of consumers the amount can be paid in cash or any other suitable way. Use of prepaid meters can also facilitate this transfer of subsidy to such consumers.

5. Metering of supply to agricultural / rural consumers can be achieved in a consumer friendly way and in effective manner by management of local distribution in rural areas through commercial arrangement with franchisees with involvement of panchayat institutions, user associations, cooperative societies etc. Use of self closing load limitors may be encouraged as a cost effective option for metering in cases of "limited use consumers" who are eligible for subsidized electricity.

8.4 Definition of tariff components and their applicability

1. Two-part tariffs featuring separate fixed and variable charges and Time differentiated tariff shall be introduced on priority for large consumers (say, consumers with demand exceeding 1 MW) within one year. This would also help in flattening the peak and implementing various energy conservation measures.
2. The National Electricity Policy states that existing PPAs with the generating companies would need to be suitably assigned to the successor distribution companies. The State Governments may make such assignments taking care of different load profiles of the distribution companies so that retail tariffs are uniform in the State for different categories of consumers. Thereafter the retail tariffs would reflect the relative efficiency of distribution companies in procuring power at competitive costs, controlling theft and reducing other distribution losses.
3. The State Commission may provide incentives to encourage metering and billing based on metered tariffs, particularly for consumer categories that are presently unmetered to a large extent. The metered tariffs and the incentives should be given wide publicity.
4. The SERCs may also suitably regulate connection charges to be recovered by the distribution licensee to ensure that second distribution licensee does not resort to cherry picking by demanding unreasonable connection charges. The connection charges of the second licensee should not be more than those payable to the incumbent licensee.

8.5 Cross-subsidy surcharge and additional surcharge for open access

8.5.1 National Electricity Policy lays down that the amount of cross-subsidy surcharge and the additional surcharge to be levied from consumers who are permitted open access should not be so onerous that it eliminates competition which

is intended to be fostered in generation and supply of power directly to the consumers through open access.

A consumer who is permitted open access will have to make payment to the generator, the transmission licensee whose transmission systems are used, distribution utility for the wheeling charges and, in addition, the cross subsidy surcharge. The computation of cross subsidy surcharge, therefore, needs to be done in a manner that while it compensates the distribution licensee, it does not constrain introduction of competition through open access. A consumer would avail of open access only if the payment of all the charges leads to a benefit to him. While the interest of distribution licensee needs to be protected it would be essential that this provision of the Act, which requires the open access to be introduced in a time-bound manner, is used to bring about competition in the larger interest of consumers.

Accordingly, when open access is allowed the surcharge for the purpose of sections 38,39,40 and sub-section 2 of section 42 would be computed as the difference between (i) the tariff applicable to the relevant category of consumers and (ii) the cost of the distribution licensee to supply electricity to the consumers of the applicable class. In case of a consumer opting for open access, the distribution licensee could be in a position to discontinue purchase of power at the margin in the merit order. Accordingly, the cost of supply to the consumer for this purpose may be computed as the aggregate of (a) the weighted average of power purchase costs (inclusive of fixed and variable charges) of top 5% power at the margin, excluding liquid fuel based generation, in the merit order approved by the SERC adjusted for average loss compensation of the relevant voltage level and (b) the distribution charges determined on the principles as laid down for intra-state transmission charges.

Surcharge formula:

$$S = T - [C (1 + L / 100) + D]$$

Where

S is the surcharge

T is the Tariff payable by the relevant category of consumers;

C is the Weighted average cost of power purchase of top 5% at the margin excluding liquid fuel based generation and renewable power

D is the Wheeling charge

L is the system Losses for the applicable voltage level, expressed as a percentage

The cross-subsidy surcharge should be brought down progressively and, as far as possible, at a linear rate to a maximum of 20% of its opening level by the year 2010-11.

8.5.2 No surcharge would be required to be paid in terms of sub-section (2) of Section 42 of the Act on the electricity being sold by the generating companies with consent of the competent government under Section 43(A)(1)(c) of the Electricity Act, 1948 (now repealed) and on the electricity being supplied by the distribution licensee on the authorisation by the State Government under Section 27 of the Indian Electricity Act, 1910 (now repealed), till the current validity of such consent or authorisations.

8.5.3 The surcharge may be collected either by the distribution licensee, the transmission licensee, the STU or the CTU, depending on whose facilities are used by the consumer for availing electricity supplies. In all cases the amounts collected from a particular consumer should be given to the distribution licensee in whose area the consumer is located. In case of two licensees supplying in the same area the licensee from whom the consumer was availing supply shall be paid the amounts collected.

8.5.4 The additional surcharge for obligation to supply as per section 42(4) of the Act should become applicable only if it is conclusively demonstrated that the obligation of a licensee, in terms of existing power purchase commitments, has been and continues to be stranded, or there is an unavoidable obligation and incidence to bear fixed costs consequent to such a contract. The fixed costs related to network assets would be recovered through wheeling charges.

8.5.5 Wheeling charges should be determined on the basis of same principles as laid down for intra-state transmission charges and in addition would include average loss compensation of the relevant voltage level.

8.5.6 In case of outages of generator supplying to a consumer on open access, standby arrangements should be provided by the licensee on the payment of tariff for temporary connection to that consumer category as specified by the Appropriate Commission.

9.0 Trading Margin

The Act provides that the Appropriate Commission may fix the trading margin, if considered necessary. Though there is a need to promote trading in

electricity for making the markets competitive, the Appropriate Commission should monitor the trading transactions continuously and ensure that the electricity traders do not indulge in profiteering in situation of power shortages. Fixing of trading margin should be resorted to for achieving this objective.

Sd/-

(U.N. PANJAR)
Additional Secretary to the Government of India

To

The Manager,
Government of India Press,
Mayapuri.

Annexure P-7



आरत का राजपत्र

The Gazette of India

असाधारण

EXTRAORDINARY

भाग III- खण्ड 4

PART III-Section 4

प्राधिकार से प्रकाशित

PUBLISHED BY AUTHORITY

No. 26

NEW DELHI, MONDAY, JANUARY 18, 2010

CENTRAL ELECTRICITY REGULATORY COMMISSION

NEW DELHI

No. L-1/12/2010-CERC

Dated: 14th January, 2010

NOTIFICATION

In exercise of 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 and all other powers enabling it in this behalf, and after previous publication, the Central Electricity Regulatory Commission hereby makes the following regulations for the development of market in power from Non Conventional Energy Sources by issuance of transferable and saleable credit certificates:

1. **Short title and commencement and extent of application**

1. These Regulations may be called the Central Electricity Regulatory Commission (Terms and Conditions for Recognition and Issuance of Renewable Energy Certificate for Renewable Energy Generation) Regulations, 2010.
2. These Regulations shall come into force from the date of their notification in the Official Gazette.
3. These Regulations shall apply throughout India except the State of Jammu and Kashmir.

2. Definitions and Interpretation:

(1) In these Regulations, unless the context otherwise requires,

- a) 'Act' means the 'Electricity Act, 2003 (36 of 2003);
- b) '**Central Agency**' means the agency as may be designated by the Commission under clause (1) of Regulation 3;
- c) '**Certificate**' means the renewable energy certificate issued by the Central Agency in accordance with the procedures laid down by it and under the provisions specified in these regulations;
- d) '**Commission**' means the Central Electricity Regulatory Commission referred to in subsection (1) of Section 76 of the Act;
- e) '**eligible entity**' means the entity eligible to receive the certificates under these regulations;
- f) '**floor price**' means the minimum price as determined by the Commission in accordance with these regulations at and above which the certificate can be dealt in the power exchange;
- g) '**forbearance price**' means the ceiling price as determined by the Commission in accordance with these regulations within which only the certificates can be dealt in the power exchange;
- h) '**MNRE**' means the Ministry of New and Renewable Energy;
- i) '**obligated entity**' means the entity mandated under clause (e) of sub-section (1) of Section 86 of the Act to fulfil the renewable purchase obligation;
- j) '**Power Exchange**' means that power exchange which operates with the approval of the Commission;
- k) []¹
- l) '**renewable energy sources**' means renewable sources such as small hydro, wind, solar including its integration with combined cycle, biomass, bio fuel cogeneration, urban or municipal waste and such other sources as recognized or approved by MNRE;
- m) '**renewable purchase obligation**' means the requirement specified by the State Commissions under clause (e) of sub-section (1) of Section 86 of the Act, for the obligated entity to purchase electricity from renewable energy sources;
- n) '**State Agency**' means the agency in the concerned state as may be designated by the State Commission to act as the agency for accreditation and recommending the renewable energy projects for registration and to undertake such functions as may be specified under clause (e) of sub-section (1) of Section 86 of the Act;
- o) '**State Commission**' means the State Commission referred to in sub-section (64) of Section 2 of the Act and includes a Joint Commission referred to in sub-section (1) of Section 83 of the Act;
- p) '**Year**' means a financial year.

(2) Words and expressions used in these Regulations and not defined herein but defined in the Act or any other regulations issued by the Commission, shall have the same meaning assigned to them respectively in the Act, or such other regulations issued by the Commission.

¹ Deleted vide Second Amendment Regulations, 2013 w.e.f. 11.7.2013

3. Central Agency and its functions:

- (1) The Commission shall designate an agency as the Central Agency after satisfying itself that the said agency has the required capability of performing its functions as provided under these regulations.
- (2) The functions of the Central Agency will be to undertake:
 - (i) registration of eligible entities,
 - (ii) issuance of certificates,
 - (iii) maintaining and settling accounts in respect of certificates,
 - (iv) repository of transactions in certificates, and
 - (v) such other functions incidental to the implementation of renewable energy certificate mechanism as may be assigned by the Commission from time to time.
- (3) Subject to provisions of these regulations, the Central Agency, with approval of the Commission and after inviting comments from the State Agency shall issue a detailed procedure for registration of eligible entities, verification of generation of electricity and its injection into the grid by the eligible entity, issuance of certificates and other relevant and residual matters:

Provided that the detailed procedure shall be prepared by the Central Agency and submitted to the Commission for approval within sixty days from the date of notification of these regulations:

Provided further that while preparing the detailed procedure the Central Agency shall give three weeks time to the State Agency and other stakeholders for comments:

Provided also that the Commission may at any time either on its own motion or on an application or representation made by any interested party direct the Central Agency to modify, add or delete any of the provisions of the detailed procedure as deemed appropriate and upon such directions by the Commission the detailed procedure shall be implemented with such modifications.

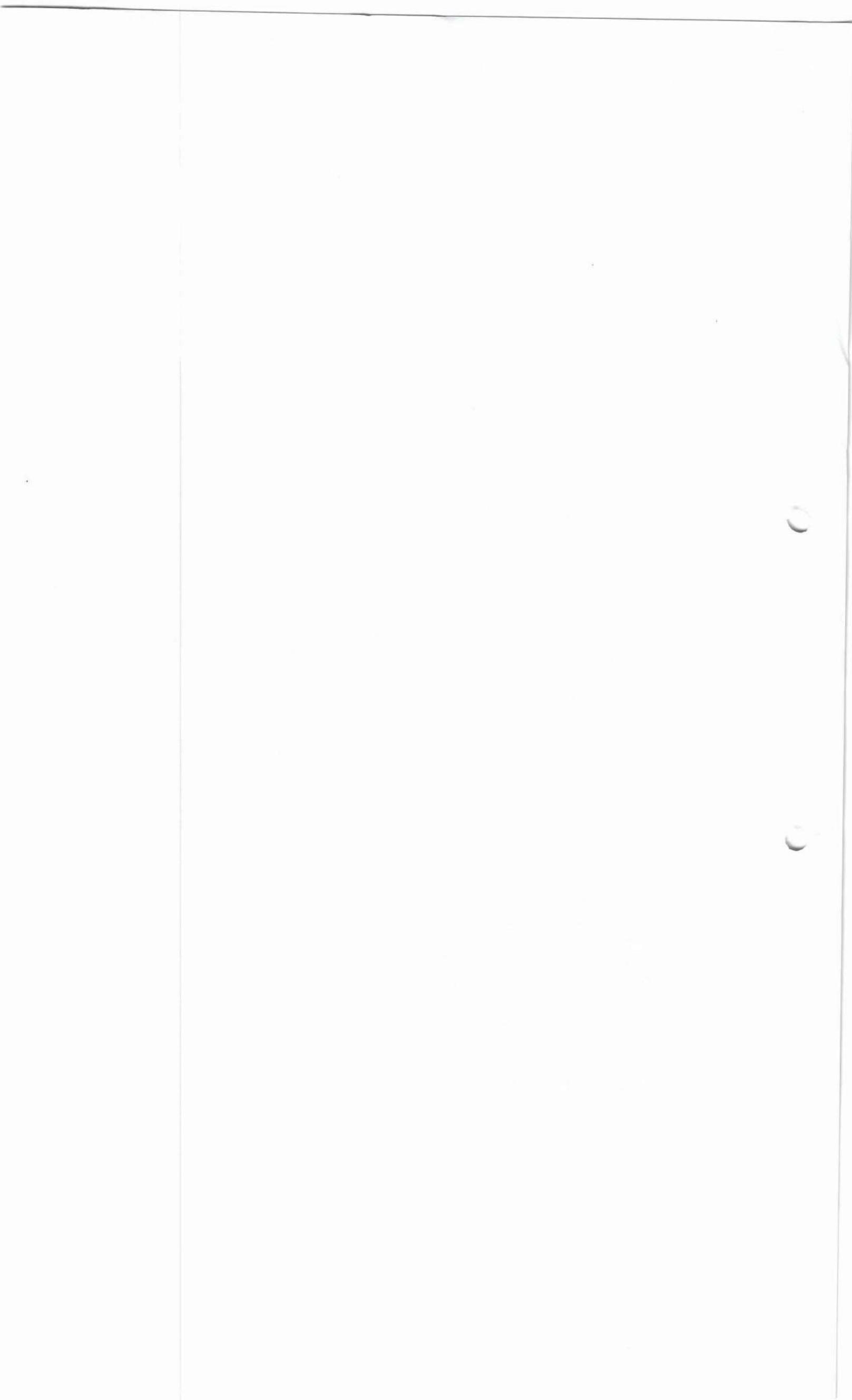
- (4) The Commission may issue directions to the Central Agency in regard to the discharge of its functions and the Central Agency shall always act in accordance with the directions issued by the Commission.

4. Categories of Certificates:

- (1) There shall be two categories of certificates, viz., solar certificates issued to eligible entities for generation of electricity based on solar as renewable energy source, and non-solar certificates issued to eligible entities for generation of electricity based on renewable energy sources other than solar:
- (2) The solar certificate shall be sold to the obligated entities to enable them to meet their renewable purchase obligation for solar, and non-solar certificate shall be sold to the obligated entities to enable them to meet their obligation for purchase from renewable energy sources other than solar.

5. Eligibility and Registration for Certificates:

- (1) 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 Certificates if it fulfils the following conditions:



- a. it has obtained accreditation from the State Agency;
- [(b) 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:

Provided that in case of renewable energy sources based co-generation plants, the connected load capacity as assessed or sanctioned by the concerned distribution licensee, shall be considered as the capacity for captive consumption for the purpose of issue of certificates, irrespective of the capacity of such plants covered under the power purchase agreement.]²

- c. 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]³ (ii) to any other licensee or to an open access consumer at a mutually agreed price, or through power exchange at market determined price.

Explanation. - for the purpose of these regulations 'Pooled Cost of Purchase' means the weighted average pooled price at which the distribution licensee has purchased the electricity including cost of self generation, if any, in the previous year from all the energy suppliers long-term and short-term, but excluding those based on renewable energy sources, as the case may be.

[Provided that such a generating company having entered into a power purchase agreement for sale of 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 shall not, in case of pre-mature termination of the agreement, be eligible for participating in the Renewable Energy Certificate (REC) scheme for a period of three years from the date of termination of such agreement or till the scheduled date of expiry of power purchase agreement whichever is earlier ,if any order or ruling is found to have been passed by an Appropriate Commission or a competent court against the generating company for material breach of the terms and conditions of the said power purchase agreement:

[]⁴

[Provided further that a renewable energy generator selling electricity component to third party through open access shall be eligible for the entire energy generated from such plant for participating in the REC scheme subject to the condition that such generator does not avail or does not propose to avail any benefit in the form of concessional/promotional transmission or wheeling charges or banking facility benefit:

Provided also that if such a renewable energy generator forgoes on its own, the benefits of concessional/promotional transmission or wheeling charges or banking facility benefit, it shall become eligible for participating in the REC scheme only after the date of forgoing such benefits:

Provided also that the above mentioned condition for renewable energy generator selling electricity component to third party through open access for participating in the REC scheme shall not apply if the benefits given to such renewable energy generator in the form of concessional transmission or wheeling charges and/or banking facility benefit are withdrawn by the concerned State Electricity Regulatory Commission and/or the State Government:

² Substituted vide Second Amendment Regulations, 2013 w.e.f 11.7.2013

³ Substituted vide Second Amendment Regulations, 2013 w.e.f 11.7.2013

⁴ Initially added vide First Amendment Regulations, 2010 w.e.f. 1.10.2010 and later substituted vide Second Amendment Regulations, 2013 w.e.f. 11.7.2013 and later deleted vide Fourth Amendment Regulations, 2016 w.e.f. 30.3.2016

Provided also that if any dispute arises as to whether a renewable energy generator has availed such concessional/promotional benefits, the same shall be referred to the Appropriate Commission for decision.

Explanation: For the purpose of this Regulation, the expression “banking facility benefit” shall mean only such banking facility whereby any renewable energy generator gets the benefit of utilizing the banked energy at any time (including peak hours) even when it has injected into grid during off-peak hours.”]⁵

[(d) 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.]⁶

[(1A) A distribution licensee shall be eligible to apply for registration with the Central Agency for issuance of and dealing in Certificates if it fulfils the following conditions:

(a) It has procured renewable energy, in the previous financial year, at a tariff determined under Section 62 or adopted under Section 63 of the Act, in excess of the renewable purchase obligation as may be specified by the Appropriate Commission or in the National Action Plan on Climate Change or in the Tariff Policy, whichever is higher:

Provided that the renewable purchase obligation as may be specified for a year, by the Appropriate Commission should not be lower than that for the previous financial year.

Provided further that any shortfall in procurement against the non-solar or solar power procurement obligation set by the Appropriate Commission in the previous three years, including the shortfall waived or carried forward by the said Commission, shall be adjusted first and only the remaining additional procurement beyond the threshold renewable purchase obligation - being that specified by the Appropriate Commission or in the National Action Plan Climate Change or in the Tariff Policy, whichever is higher - shall be considered for issuance of RECs to the distribution licensees.

b) It has obtained a certification from the Appropriate Commission, towards procurement of renewable energy as provided in sub - clause (a) of this regulation.]⁷

[(1B) A Captive Generating Plant (CGP) based on renewable energy sources, including renewable energy generating plant not fulfilling the conditions of CGP as prescribed in the Electricity Rules, 2005 but having self-consumption, shall not be eligible for participating in the REC scheme for the energy generated from such plant to the extent of self-consumption, if such a plant:

- a) has been commissioned prior to 29th September 2010 or after 31st March 2016; or
- b) is not registered with Central Agency under REC scheme on or before 30th June 2016.

Provided that a CGP based on renewable energy sources, including renewable energy generating plant not fulfilling the conditions of CGP as prescribed in the Electricity Rules, 2005 but having self-consumption, and fulfilling both the following conditions:

- a) having date of commissioning between 29th September 2010 and 31st March 2016; and
- b) registered with Central Agency under REC scheme on or before 30th June 2016

⁵ Added vide Fourth Amendment Regulations, 2016 w.e.f. 30.3.2016

⁶ Added vide Second Amendment Regulations, 2013 w.e.f. 11.7.2013

⁷ Added vide Third Amendment Regulations, 2014 w.e.f. 1.01.2015

shall be eligible for the entire energy generated from such plant for participating in the REC scheme subject to the condition that such plant does not avail or does not propose to avail any benefit in the form of concessional/promotional transmission or wheeling charges and/or banking facility benefit:

Provided further that if such plant meeting the eligibility criteria for REC, forgoes on its own, the benefits of concessional transmission or wheeling charges and/or banking facility benefit, it shall become eligible for participating in the REC scheme only after a period of three years has elapsed from the date of forgoing such benefits:

Provided also that the above mentioned condition for participating in the REC scheme shall not apply if the benefits given to such plant in the form of concessional transmission or wheeling charges and or banking facility benefit are withdrawn by the concerned State Electricity Regulatory Commission and/or the State Government:

Provided also that if any dispute arises as to whether a CGP or any other renewable energy generator has availed such concessional/promotional benefits, the same shall be referred to the Appropriate Commission for decision.

Explanation:- For the purpose of this regulation, the expression „banking facility benefit“ shall mean only such banking facility whereby the CGP or any other renewable energy generator gets the benefit of utilizing the banked energy at any time (including peak hours) even when it has injected into grid during off-peak hours.]⁸

- (2) The generating company [or the distribution licensee, as the case may be]⁹ after fulfilling the eligibility criteria as provided in clause (1) of this regulation may apply for registration with the Central Agency in such manner as may be provided in the detailed procedure:
- (3) The Central Agency shall accord registration to such applicant within fifteen days from the date of application for such registration.

Provided that an applicant shall be given a reasonable opportunity of being heard before his application is rejected with reasons to be recorded in writing.

- (4) A person aggrieved by the order of the Central Agency under proviso to clause (3) of this regulation may appeal before the Commission within fifteen days from the date of such order, and the Commission may pass order, as deemed appropriate on such appeal.

6. Revocation of Registration

- (1) If the Central Agency, after making an enquiry or based on the report of the Compliance Auditors, is satisfied that public interests so require, it may revoke registration of the eligible entity in any of the following cases, namely:
 - (a) where the eligible entity, in the opinion of the Central Agency, makes wilful and prolonged default in doing anything required of him by or under these regulations;
 - (b) where the eligible entity breaks any of the terms and conditions of its accreditation or registration, the breach of which is expressly declared by such accreditation or registration to render it liable to revocation;
 - (c) where the eligible entity fails within the period required in this behalf by the Central Agency - (i) to show, to the satisfaction of the Central Agency, that it is in a position fully and efficiently to discharge the duties and obligations imposed on it by its accreditation or registration; or (ii) to make the deposit or furnish the security, or pay the fees or other charges required by its accreditation or registration.

⁸ Inserted vide Fourth Amendment Regulations, 2016 w.e.f. 30.3.2016

⁹ Added vide Third Amendment Regulations, 2014 w.e.f. 1.01.2015

- (2) The Central Agency before revoking the registration under Clause (1) of this regulation shall give to the eligible entity reasonable opportunity for being heard.
- (3) Notwithstanding the provisions of sub-regulations (2) and (3) above, the Commission may from time to time direct the Central Agency to initiate enquiry and/or revocation process if the Commission deems it fit where any or all of the conditions as at clauses (a) to (c) of sub-regulation (1) exist.
- (4) A person aggrieved by the order of the Central Agency under proviso to clause (1) of this regulation may appeal before the Commission within fifteen days of such order being communicated, and the Commission may pass order, as deemed appropriate on such appeal.

7. Denomination and issuance of Certificates

- (1) [The eligible entity [other than distribution licensee]¹⁰ shall apply to the Central Agency for certificates within six months from the corresponding generation from eligible renewable energy projects:

Provided that the application for issuance of certificates may be made on 10th, 20th and last day of the month.]¹¹

[(1A) The eligible distribution licensees shall apply to the Central Agency for Certificates within three months from the date of obtaining the certification, as provided in clause (1 A) of the Regulation 5, from the concerned Appropriate Commission.]¹²

- (2) 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.
- (3) The Certificates shall be issued by the Central Agency within fifteen days from the date of application by the eligible entities.
- (4) The Certificates shall be issued to the eligible entity on the basis of the units of electricity generated from renewable energy sources and injected into the Grid [or deemed to be injected in case of self consumption by eligible [captive generating plant]¹³]¹⁴ 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.
- (5) The process of certifying the energy injection shall be as stipulated in the detailed procedures to be issued by the Central agency.
- [(6) Each Certificate issued shall represent one Megawatt hour of electricity generated from renewable energy source and injected or deemed to be injected (in case of self consumption by eligible [captive generating plant]¹⁵ into the grid.)¹⁶
- [(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

¹⁰ Added vide Third Amendment Regulations, 2014 w.e.f. 1.01.2015

¹¹ Substituted vide Second Amendment Regulations, 2013 w.e.f. 11.7.2013

¹² Added vide Third Amendment Regulations, 2014 w.e.f. 1.01.2015

¹³ Substituted vide Second Amendment Regulations, 2013 w.e.f. 11.7.2013

¹⁴ Added vide First Amendment Regulations, 2010 w.e.f. 1.10.2010

¹⁵ Substituted vide Second Amendment Regulations, 2013 w.e.f. 11.7.2013

¹⁶ Substituted vide First Amendment Regulations, 2010 w.e.f. 1.10.2010

framework prior to 1st 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 shall be provided to the solar generating companies registered under REC framework prior 1st January 2015 and shall be applicable [for the existing and future solar RECs]¹⁷ for the period from 1st January 2015 up to 31 st March 2017, after which such projects shall be eligible for one REC for one megawatt hour of electricity generated.]¹⁸

8. Dealing in the certificates

- (1) [Unless otherwise specifically permitted by the Commission by order, the certificate shall be dealt only through the power exchange and not in any other manner except as provided in clause (3) of this regulation.]¹⁹
- (2) 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 Commission on the rules and byelaws including the mechanism for discovery of price of the Certificates in the Power Exchange.
- (3) An eligible renewable energy generator including an eligible captive generating plant shall be permitted to retain the certificates for offsetting its renewable purchase obligation as a consumer subject to certification and verification by the concerned State Agency:]²⁰

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.
- (2) 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;
 - (c) Expected electricity generation from renewable energy sources including:-
 - (i) expected renewable energy capacity under [tariff, for sale of electricity to an obligated entity for the purpose of meeting its renewable purchase obligations,

¹⁷ Inserted vide Corrigendum dated 27.01.2015

¹⁸ Added vide Third Amendment Regulations, 2014 w.e.f. 1.01.2015

¹⁹ Substituted vide Second Amendment Regulations, 2013 w.e.f. 11.7.2013

²⁰ Added vide Second Amendment Regulations, 2013 w.e.f. 11.7.2013 later substituted vide Fourth Amendment Regulations, 2016 w.e.f. 30.3.2016

determined under Section 62 or adopted under Section 63 of the Act by the Appropriate Commission.]²¹

- (ii) expected renewable energy capacity under mechanism of certificates;
- (d) Renewable purchase obligation targets set by various State Commissions.

10. Validity and extinction of Certificates

- (1) [[After registration, the renewable energy generation plant shall be eligible for issuance of Certificates under these Regulations from the date of commercial operation or from the date of registration of such plant by the Central Agency whichever is later:

[Provided further that the Certificate issued under these regulations shall remain valid for one thousand and ninety five days from the date of issuance:

Provided that the RECs which expired in the financial year 2014-15 and the RECs issued till the date of effect of CERC (Terms and Conditions for recognition and issuance of Renewable Energy Certificate for Renewable Energy Generation) (Third Amendment) Regulations, 2014 shall remain valid for one thousand and ninety five days from the date of issuance or up to 31st March 2017, whichever is later.

Provided also that the Certificate issued to an eligible entity for the electricity generated at a time when such entity fulfilled the eligibility criteria for accreditation, shall remain valid for the said period of one thousand and ninety five days, even if accreditation of such entity is revoked at a later date:]²²

Provided that where an eligible entity has obtained accreditation and registration on the basis of false information or by suppressing material information and the accreditation of such entity is revoked at a later date, the Certificates already issued to such entity but not redeemed shall stand revoked from the date of issue of such Certificates and in respect of Certificates already redeemed, such entity shall deposit the amount realized from sale of such Certificates along with the interest with the Central Agency at the rate of two (2) percent in excess of the applicable State Bank of India Base rate per annum.]]²³

- (2) Subject to the time limit as provided in clause (1) of this Regulation, a Certificate shall be deemed to have been extinguished after it has been exchanged by way of sale and purchase in the Power Exchange.

11. Fees and charges:

- (1) The Commission may from time to time, based on the proposal in this regard from the Central Agency, determine, by order, the fees and charges payable by the eligible entities for participation in the scheme for registration, eligibility of certificates, issuance of certificates and other matters connected therewith.
- (2) The fees and charges payable under these regulations may include one-time registration fee and charges, annual fee and charges, the transaction fee and charges for issue of certificate and charges for dealing in the certificate in accordance with these regulations, as the Commission may consider appropriate.
- (3) The fees and charges paid by the eligible entities shall be collected by the Central Agency and utilised for the purpose of meeting the cost and expense towards the remuneration payable to the compliance auditors, the officers, employees, consultants and representatives engaged to perform the functions under these regulations.

²¹ Substituted vide Second Amendment Regulations, 2013 w.e.f. 11.7.2013

²² Substituted vide Third Amendment Regulations, 2014 w.e.f. 1.01.2015

²³ Substituted vide Second Amendment Regulations, 2013 w.e.f. 11.7.2013

12. Funding for capacity building of State Agency:

- (1) The Commission may, by order, provide for a certain percentage of the proceeds from the sale of Certificates for the purpose of training and capacity building of the State Agencies and other facilitative mechanisms for the implementation and monitoring of the detailed procedures issued by the Central Agency.
- (2) The proceeds as provided under clause (1) of this regulation shall be collected by the power exchange and transferred to the Commission or such agency as may be directed by the Commission.

13. Appointment of compliance auditors:

- (1) The Commission may, in consultation with the Central Agency, appoint from time to time compliance auditors to inquire into and report on the compliance of these Regulations by the person applying for registration, or on the compliance by the renewable energy generators in regard to the eligibility of the Certificates and all matters connected thereto.
- (2) The compliance auditor shall have the qualifications and experience as contained in the Schedule to these Regulations:
Provided that the Commission may by order amend the Schedule from time to time.
- (3) The Commission may from time to time fix the remuneration and charges payable to such auditors and all such amount payable shall be met out of the funds which the Central Agency may collect from the eligible entities.

14. Power to give directions:

The Commission may from time to time issue such directions and orders as considered appropriate for the implementation of these regulations and for the development of market in power for Renewable Energy Sources.

15. Power to Relax:

The Commission may by general or special order, for reasons to be recorded in writing, and after giving an opportunity of hearing to the parties likely to be affected may relax any of the provisions of these regulations on its own motion or on an application made before it by an interested person.

Sd/-
(Alok Kumar)
Secretary

Schedule

Qualification of Auditors

The auditor could be an individual person or a firm having persons with qualification and experience in the following areas:

- a. Finance or accounts or commerce, and

b. having qualifications and experience in the field of engineering with specialisation in generation, transmission or distribution of electricity, experience that demonstrates an adequate understanding of the electricity sector, institutions involved including Regulatory Commission, utilities, government institutions, State agencies and their roles and responsibilities.

Note:

The Central Electricity Regulatory Commission (Terms and Conditions for Recognition and Issuance of Renewable Energy Certificate for Renewable Energy Generation) Regulations, 2010 were notified in Part III, Section 4, No. 26 of the Gazette of India (Extraordinary) dated 18.1.2010 and amended vide:-

- (a) First Amendment Regulations, 2010 published in Part III, Section 4, No. 249 of the Gazette of India (Extraordinary) dated 01.10.2010.
- (b) Second Amendment Regulations, 2013 published in Part III, Section 4, No. 192 of the Gazette of India (Extraordinary) dated 11.7.2013.
- (c) Third Amendment Regulations, 2014 published in Part III, Section 4, No. 380 of the Gazette of India (Extraordinary) dated 31.12.2014.
- (d) Corrigendum dated 27.01.2015.
- (e) Fourth Amendment Regulations, 2016 published in Part III, Section 4, No. 112 of the Gazette of India (Extraordinary) dated 30.03.2016.

Annexure P-8

C/SCA/171/2011

CAV JUDGMENT

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**SPECIAL CIVIL APPLICATION NO. 171 of 2011****With****CIVIL APPLICATION NO. 11627 of 2011****In****SPECIAL CIVIL APPLICATION NO. 564 of 2011****With****CIVIL APPLICATION NO. 10435 of 2012****In****SPECIAL CIVIL APPLICATION NO. 558 of 2011****With****SPECIAL CIVIL APPLICATION NO. 7084 of 2011****With****CIVIL APPLICATION NO. 10439 of 2012****In****SPECIAL CIVIL APPLICATION NO. 936 of 2011****With****SPECIAL CIVIL APPLICATION NO. 936 of 2011****With****CIVIL APPLICATION NO. 10440 of 2012****In****SPECIAL CIVIL APPLICATION NO. 791 of 2011****With****CIVIL APPLICATION NO. 10436 of 2012****In****SPECIAL CIVIL APPLICATION NO. 597 of 2011****With****SPECIAL CIVIL APPLICATION NO. 597 of 2011****With****CIVIL APPLICATION NO. 10434 of 2012****In****SPECIAL CIVIL APPLICATION NO. 8027 of 2011****With****SPECIAL CIVIL APPLICATION NO. 564 of 2011****With**

CIVIL APPLICATION NO. 10441 of 2012
In
SPECIAL CIVIL APPLICATION NO. 7084 of 2011
With
CIVIL APPLICATION NO. 10437 of 2012
In
SPECIAL CIVIL APPLICATION NO. 564 of 2011
With
CIVIL APPLICATION NO. 9013 of 2011
In
SPECIAL CIVIL APPLICATION NO. 171 of 2011
With
SPECIAL CIVIL APPLICATION NO. 8027 of 2011
With
SPECIAL CIVIL APPLICATION NO. 558 of 2011
With
SPECIAL CIVIL APPLICATION NO. 791 of 2011
With
SPECIAL CIVIL APPLICATION NO. 10471 of 2013

FOR APPROVAL AND SIGNATURE:

HONOURABLE MR.JUSTICE ANANT S. DAVE

=====

- 1 Whether Reporters of Local Papers may be allowed to see the judgment ?
- 2 To be referred to the Reporter or not ?
- 3 Whether their Lordships wish to see the fair copy of the judgment ?
- 4 Whether this case involves a substantial question of law as to the interpretation of the Constitution of India or any order made thereunder ?

=====

HINDALCO INDUSTRIES LIMITED (UNIT : BIRLA COPPER)....Petitioner(s)

Versus

GUJARAT ELECTRICITY REGULATORY COMMISSION....Respondent(s)

Appearance:

MR MIHIR THAKORE Senior Advocate with MR PERCY KAVINA Senior Advocate with MR SANDEEP SINGHI with MR SHAMIK BHATT for Singh & Company for the Petitioner(s) No. 1 [SCA Nos.171/2011, 597/2011, 564/2011 and 558/2011]

MR MIHIR H. JOSHI Senior Advocate with MR GAURAV S MATHUR for the Petitioner(s) No.1 [SCA Nos.7984/2011 & 10471/2013]

MR SN SOPARKAR Senior Advocate with MR RS SANJANWALA Senior Advocate with MR MAHESH SAHASRANAMAN [SCA No.791/2011]

MR KAMAL TRIVEDI Senior Advocate with MR BD KARIA, ADVOCATE for the Respondent-GERC in all SCAs and CAs

MR PM THAKKAR Senior Advocate with MR HEMAL K MAKWANA Advocate for the Applicant-Indian Wind Energy Association

CORAM: HONOURABLE MR.JUSTICE ANANT S. DAVE

Date : 12/03/2015

**THE HIGH COURT
OF GUJARAT
COMMON CAV JUDGMENT**

1 In all these nine petitions, the petitioners challenge the order dated 17.4.2010 and the regulations issued vide notification dated 17.4.2010, namely, the Gujarat Electricity Regulatory Commission [Procurement of Power from Renewable Sources] Regulations, 2010 (hereinafter referred to as @the Regulations@] passed by the respondent, Gujarat Electricity Regulatory Commission, as being without

jurisdiction, discriminatory, ultra-vires the Electricity Act, 2003, amounting to unreasonable restriction and violative of Articles 14 and 19(1)(g) of the Constitution of India. By the impugned order, the Gujarat Electricity Regulatory Commission, in exercise of power under Section 86(1)(e) of the Electricity Act, 2003 [for short, ©the Act©], has mandated all the petitioners, who are having ©captive power plant© [CPP] or ©captive generating plant© [CGP], to purchase electricity (in kWh) from renewable energy sources at a defined minimum percentage of their total consumption during a year, by treating them as ©Obligated Entities© and bringing them within the purview of ©Renewable Purchase Obligation©.

2 The common issue raised in all these petitions is based on interpretation of Section 86(1) (e) with other provisions of Electricity Act, 2003, Rules and Regulations, etc.

3 Details of the activities of the petitioners are as under:

WEB COPY
Hindalco Industries Limited, petitioner of Special Civil Application No.171 of 2011, has set up a mega Greenfield copper smelting and refining. It produces copper cathodes and continuous cast copper rods. It has total capacity of the smelter upto 5 lakh tons per year at single location at Dahej.

Grasim Industries Limited, petitioner of

Special Civil Application No.558 of 2011, is engaged in manufacture of cellulosic fibers. It has captive power plant unit i.e. Birla Cellulosic, at Kosamba, Dist: Bharuch.

Aditya Birla Nuvo Limited, petitioner of Special Civil Application No.564 of 2011, is engaged in manufacture of viscose filament yarn, caustic soda. It has captive power plant at Veraval.

Ultratech Cement Limited, petitioner of Special Civil Application No.597 of 2011, is engaged in manufacture of cement at Kovaya, Dist: Amreli and is having a number of units of CPP of different capacity under operation.

Reliance Industries Limited, petitioner of Special Civil Application No.791 of 2011, is engaged in oil refinery business at Jamnagar.

Arvind Limited, petitioner of Special Civil Application No.936 of 2011, is engaged in the business of textiles and clothing having multi product textile facility at Naroda road, Ahmedabad.

DCM Shriram Consolidated Limited, petitioner of Special Civil Application No.7084 of 2011, has a division at Bharuch in the name of Shriram Alkali & Chemicals. It is engaged in the business of manufacturing chlor-alkali products viz. caustic soda, chlorine, hydrogen and hydrochloric acid at its unit

at Bharuch.

United Phosphorus Limited, petitioner of Special Civil Application No.8027 of 2011, is in the business of producing chloro alkalies and agro chemicals, at Jhagadia, Dist: Bharuch.

Nirma Limited, petitioner of Special Civil Application No.10471 of 2013, is engaged in the business of manufacturing soaps and detergent, soda ash, caustic soda, salt and pharmaceuticals. It has 6 units/divisions in Gujarat.

4 Admittedly, the petitioners are running various manufacturing plants in the State of Gujarat and they have, as a vital step towards making the plants self-sufficient in their energy requirements and for uninterrupted supply of power, installed ©captive power plant© [CPP] or ©captive generating plant© [CGP] at their respective units. It is the case of the petitioners that the CPPs came up during the time when the State of Gujarat was facing severe electricity shortage and unreliable electricity supply to the industries, which hampered industrial growth and production in the State. As a result, to overcome the shortage and unreliable power supply crisis, the State decided to promote CPPs/CGPs and, especially, encouraged co-generation to meet with power and steam requirements of the respective industries. The industry at large more particularly, the continuous process industries were also constrained to set up

their own CPPs within the framework of the then prevailing Electricity Supply Act, 1948. Thus, the CPPs were set up by the industrial consumers with a huge investment.

5 The respondent framed Regulations vide notification dated 29.10.2005. The 2005 Regulations, in substance, provided for each Distribution Licensee to purchase a defined minimum quantum of its total consumption of electricity during a year from renewable sources. After considering the objections raised and hearing the interested parties, the respondent by order dated 8.5.2009 came up with the draft of fresh Power Procurement from Renewable Sources Regulation, vide Notification No.1 of 2009. According to the 2009 Regulations, the minimum power purchase requirement from renewable sources was made applicable to the CPPs. The petitioners filed writ petitions challenging the order dated 8.5.2009 passed by the respondents. This Court [Coram: K.S. Jhaveri, J.], by order dated 9.11.2009, disposed of all the writ petitions as having become infructuous, since the impugned order dated 8.5.2009 passed by the respondent will not survive in the eyes of law on withdrawal of concerned Review Petition No.933 of 2008.

6 It is the case of the petitioners that, subsequently, the respondent prepared a new draft of Regulations on Power Procurement from Renewable Sources {dated 8.1.2010} which in substance were a replica of the earlier 2009 Regulations. A public

hearing was conducted on 4.3.2010 and the petitioners raised objections. The respondent, after giving due consideration to the objections raised by various CPPs, passed the Regulations on 17.4.2010. The subject Regulations, qua the CPPs, have not been implemented by notification as on date, as is stated under clause 1(iv) of the Regulations which provides that Clause 8 of the Regulations, dealing with the RPO imposition upon the CPPs and open access users, shall come into force from a date to be notified by the respondent separately. However, clause 2(k) of the Regulations classifies the CPPs as ©Obligatory Entity© and clause 3(b) states that RPO would be applicable to a CPP having capacity of 5 MW and above, having been notified with effect from 17.4.2010. It is submitted that the issue of CPPs being at par with the renewable energy producers came up before the Appellate Tribunal for Electricity in the matter of Century Rayon vs. Maharashtra Electricity Regulatory Commission and others, and the Appellate Tribunal, by order dated 26.4.2010, held that CPPs are at par with renewable energy producers and thus RPPO cannot be imposed upon them.

7 The respondent passed order No.7 of 2010 and Notification No.4 of 2010 on 16.4.2010, designating the Gujarat Energy Development Agency (GEDA) as the State Agency for the purpose of the Procurement of power of Energy from Renewable Sources Regulations, (Notification No.3 of 2010) in addition to pre-assigned functions of accrediting and recommending the

renewable energy projects for registration in the State. In the order dated 17.4.2010, the respondent held as under:

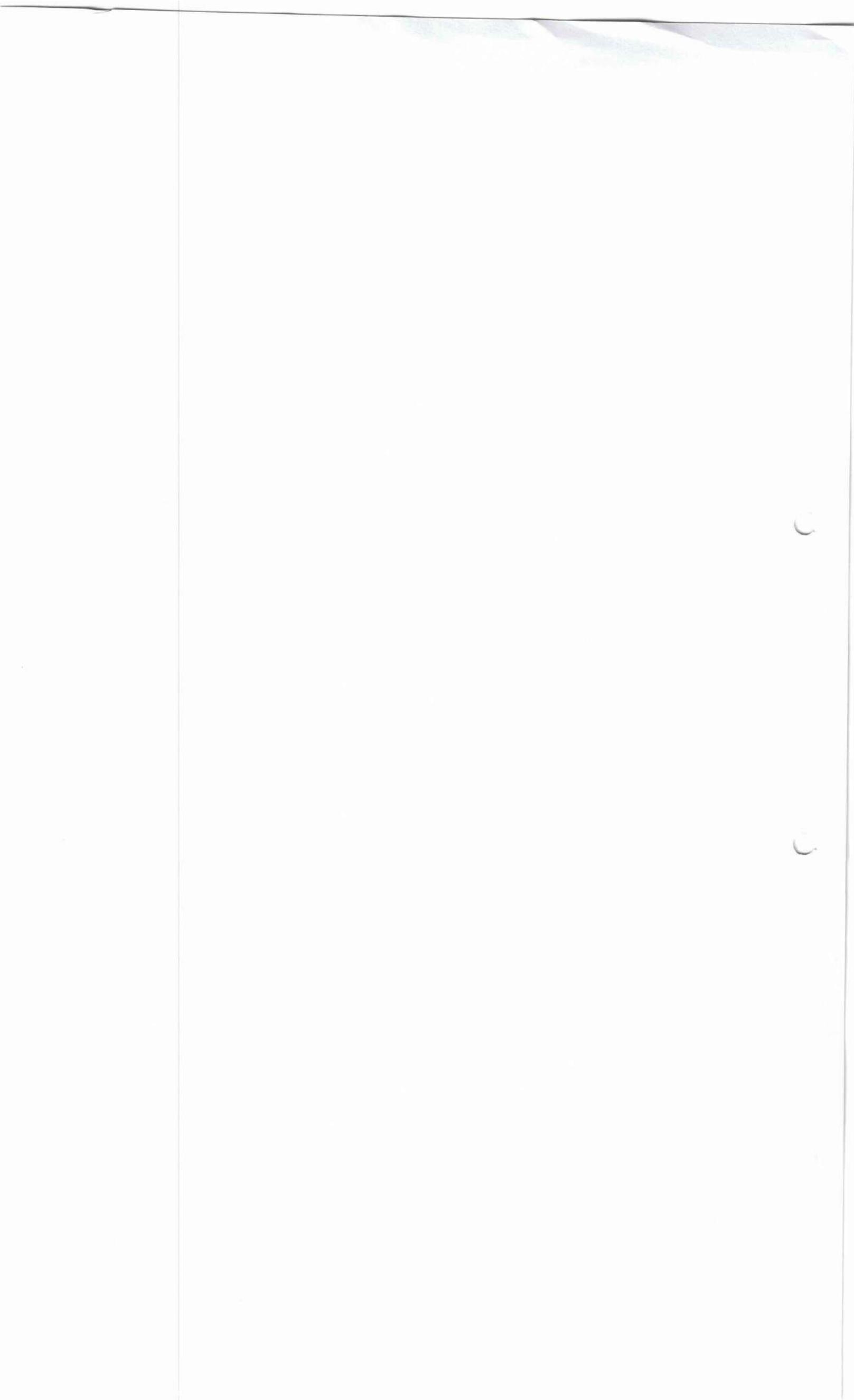
- [i] The Commission is empowered to frame the Regulations for procurement of power from renewable energy sources as a promotional measure. The Commission has jurisdiction to frame the Regulations.
- [ii] The Draft Regulations do not violate any provisions of the Constitution;
- [iii] The Commission decides to retain the provisions regarding RECs as included in the Draft Regulations;
- [iv] The proposed regulations, in no way, interfere with the operation of generating plants since RPO is not related to generation from such plants but to consumers availing generation from such CPPs.
- [v] Section 49 gives open access consumers the freedom to purchase electricity from ©any person©. Imposing an RPO does operate as a restriction on this freedom, since the specified percentage of the total consumption has to be from renewable energy sources (or to be compensated by purchasing RECs). However, it is a reasonable and permissible restriction.

[vi] RPO shall be applied to consumption from CPPs with generating capacity of 5 MW or more.

[vii] For fulfilling the RPO, only the electricity generated or co-generated from renewable energy sources, can be considered eligible.

[viii] The Regulations are framed in pursuance of the powers vested in the Commission under section 181 of the Act. As such, power to seek compliance of the Regulations also vests with the Commission.

8. Learned Senior Advocates, Mr. Mihir Thakor, Mr. Percy Kavina, Mr. S.N.Soparkar, Mr. R.S.Sanjanwala and Mr. Mihir Joshi, appearing for the petitioner + companies strenuously urged that GERC erred in law as well as on facts in fastening obligation upon the petitioners by bringing them under purview of ^{WEB COPY} Obligated entities© inasmuch as while discharging functions under the Act, 2003, Regulatory Commission is to be guided by National Electricity Policy is National Electricity Plan and Tariff Policy published under Section 3 of the Act, 2003. That CGPs / GPPs are not obligated entities in view of their distinct status under Section 9 of the Part-III under the heading Generation of Electricity of Act, 2003, since CGPs are not under regulatory regional for availing licences etc. Learned counsels for the petitioners



raised the following contentions:

[a] The respondent has no jurisdiction to pass the order impugned. The respondent has failed to appreciate the overall scheme of the Act and the scope of its limited regulatory powers qua CPPs. The Act recognizes the special provision of CPPs, which is reflected in Section 9 of the Act which starts with a non-obstante clause entitling a person to @.. construct, maintain or operate a captive generating plant and dedicated transmission lines©. Section 9(2) of the Act provides that, @every person who has constructed a captive generating plant and maintains and operates such plant, shall have the right to open access for the purpose of carrying electricity from his captive generating plant to the destination of his use.© Proviso to Section 9(1) clearly indicates the limited extent of regulation which the Act contemplates over CPPs by providing that, a..... the supply of electricity from captive generating plant through the grid shall be regulated in the same manner as the generating station of a generating company.º. Hence, the CPPs are outside the regulatory control of the respondent, except as it contemplated under the proviso to Section 9(1) of the Act and, consequently, Section 86(1)(e) cannot be pressed into service so as to extend the RPO to the CPPs.

[b] The order impugned is outside the ambit and scope of Sections 86(1)(e), 61(h) and 181 of the Act, in as much as, these sections do not empower the respondent to create compulsory obligation upon a person requiring such person to purchase a certain quantity or percentage of electricity from such source as the respondent may require. No unbridled or unfettered discretion is conferred on the respondent under the Act to exercise powers in breach of the fundamental rights to frame such regulation specifying a quantum or percentage of power to be purchased from the renewable energy sources. The CPPs are outside the regulatory control of the respondent.

[c] The respondent has misconstrued the provisions of Section 86(1)(e) of the Act and wrongly held that both ©co-generation© and ©generation© relate to ©electricity from renewable sources of energy©. That, interpretation of the term ©co-generation© is contrary to the ratio laid down by the APTEL vide its order dated 26.4.2010 in the matter of Century Rayon vs. Maharashtra Electricity Regulatory Commission and others, wherein it is observed that co-generation of CPPs is at par with renewable energy producers and thus the RPPO cannot be imposed upon them. The principle of judicial discipline requires that the judgments of the higher appellate authorities should be followed scrupulously and unreservedly by its

subordinate authorities. Failure thereof would amount to destructive of one of the basic principles of the administration of justice.

8.1 Section 86(1)(e) clearly mandates that both co-generation and generation of electricity from renewable sources of energy, are to be promoted. This section cannot be interpreted so as to mean that co-generation has also to be from renewable sources of energy since that would violate the language of the provision. Further more, consumption of electricity by a captive consumer from its captive power plant is not @consumption of electricity in the area of distribution licensees© as contemplated in Section 86(1)(e). The test is not whether a captive consumer is within the geographical area of a distribution licensee but whether the captive consumer is supplied electricity by a licensee.

[d] The impugned Regulations are ultra vires the Act. That, the respondent has misconstrued the purport of the phrase contained in Section 86(1) (e) of the Act @a percentage of the total consumption of electricity in the area of a distribution licensee© . It is submitted that, on true interpretation of Section 86(1)(e), it could only mean the electricity consumed in the area of supply of the distribution licensee as is distributed by the distribution licensee and cannot include CPPs simply because they are physically located within the area of a

distribution licensee, notwithstanding the fact that the CPPs are otherwise outside the regulatory sphere of the respondent. Section 86(1)(e) has to be read subject to the non-obstante provision contained in Section 9 of the Act. A CPP in terms of Section 2(8) of the Act means, @a power plant set up by any person to generate electricity primarily for his own use...@. An artificial distinction is pressed into service so as to avoid the mandate of Section 9 of the Act. Section 9 explicitly contemplates the right of the CPPs to (a) construct, (b) maintain or operate a captive generating plant, whereas, Section 86(1)(b) merely entitles the State Commission to regulate electricity purchase and procurement process of the distribution licensee. Hence, the respondent has no power to impose restriction which interferes with the right of the CPPs to freely construct, maintain or operate a captive generating plant in terms of the provisos to Section 9(1).

(e) Section 61 of the Act refers to fixation of tariff by the appropriate Commission which also contemplates that in doing so, the Commission shall be guided by @the promotion of co-generation and the generation of electricity from renewable sources of energy@ and, thus, there is no tariff fixation exercise by an appropriate commission involved in the use of electricity by

a captive consumer from its captive power plant.

(f) Under the scheme of the Act, both renewable source of energy and co-generation power plant are equally entitled to be promoted by the State Commission through suitable methods and suitable directions, in view of the fact that co-generation plants, who provide many number of benefits to environment as well as to the public at large, are entitled to be treated at par with the other renewable energy sources. But, the captive users of electricity in co-generation mode have been discriminated in a hostile manner in as much as it denies the right of equality.

(g) As defined in the Electricity Rules, 2005, a captive consumer is really not a consumer but defined as a ©captive user© in Rule 3(2) (explanation)(1)(b).

(h) Mere use of fossil fuel would not make co-generation plant as a conventional plant.

(i) The respondent has failed to appreciate the waste heat recovery is classified as co-generation and the extent of waste heat recovery ought to have been given as a credit while imposing the RPO.

[j] The respondent has erred in observing, on the reading of definition of the word ©specified©

as contained in Section 2(62) of the Act that the same implies that whenever the word ©specified© is used in the Act, the appropriate Commission is mandated to frame the relevant Regulations relating to the particular section(s) of the Act.

(k) That the impugned order is beyond the purview of Section 181 of the Act to frame the Regulation for procurement of power from renewable energy sources as a promotional measure. That the respondent has no power or jurisdiction to mandate compulsory purchase of electricity from a particular source.

(l) That the impugned resolution is arbitrary and violative of Articles 19(1)(g) and 301 of the Constitution of India. The action of the respondent in imposing upon the CPPs, the mandatory requirement to purchase renewable energy directly and proximately interferes with the exercise of freedom of trade guaranteed by Articles 19(1)(g) and 301 of the Constitution of India. The offending provisions contained in the Regulations constitute an unreasonable restriction on the petitioners© fundamental rights guaranteed under Articles 19(1)(g) of the Constitution of India and infringe the constitutional right of the petitioners of free trade and commerce under Article 301 of the Constitution of India.

8.2 In addition to the submissions made herein above by the learned counsel for the petitioners, the following submissions are also taken note of and they are as under:

8.3 It is submitted that Section 86(1)(e) clearly mandates that both co-generation and generation of electricity from renewable sources of energy are to be promoted. That, this section cannot be interpreted so as to mean that co-generation has also to be from renewable sources of energy since that would violate the language of the provision. Furthermore, consumption of electricity by a captive consumer from its captive power plant is not 'consumption of electricity in the area of distribution licensees' as contemplated in Section 86(1)(e). That, the test is not whether the captive consumer is within the geographical area of a distribution licensee but whether the captive consumer is supplied with electricity by a licensee. To illustrate, a captive consumer, on an island mode who does not take any power from the distribution licensee but entirely relies upon its captive power plant, though being within the geographical area of a distribution licensee, would not fall within the contemplation of Section 86(1)[e] and no obligation for compulsory purchase can be inflicted on such a captive consumer. On the other hand, if a captive consumer relies upon the distribution licensee for 10% of its requirements or at times when its captive power plant is non operational or under maintenance, it

cannot be said that such captive consumer will be fastened with the RPO for its entire power requirement, since that would be violative of Article 19(1)(g) of the Constitution of India. Not only that, to the extent that the captive consumer obtains power from a distribution licensee, a captive consumer is suffering the RPO, to the extent that a distribution licensee suffers the same. Reference may be made in this connection to the definitions contained in Sections 2(15) ± consumer, 2(17) distribution licensee, 2(3) area of supply, 2(26) electricity trader, 2(8) captive generating plant, 2(70) supply and 2(71). Consumption, therefore, has to be read in the context of actual consumption through the distribution licensees.

8.4 Section 61 which refers to fixation of tariff by the appropriate commission, also contemplates that in so doing, the Commission shall be guided by 'the promotion of co-generation and the generation of electricity from renewable sources of energy'. Clearly, that is no tariff fixation exercise by an appropriate commission involved in the use of electricity by a captive consumer from its captive power plant.

8.5 The extent of RPO indicated in the subject Regulations is too high and no realistic study of the extent of electricity available from renewable energy sources was available or carried out, before framing the subject Regulations. The respondent has

purportedly relied upon some assessment of availability of electricity from various renewable energy sources in the State with the help of GEDA, but no such study or material has been made available to the CPPs like the petitioner, nor is any such study detailed in the order impugned. There is nothing on record to demonstrate that the total electricity requirement of the Captive Power Consumer, should the subject Regulations be implemented, will be definitely met by producers of renewable energy.

8.6 The respondent has failed to appreciate that in view of the mismatch between the availability of renewable energy on the one hand and the demand which would be generated upon the implementation of RPO, makes the RPO unworkable, impractical and against the interest of Industry at large. The failure of the respondent to undertake a study of RE and the potential demand to be generated before framing the RPO is an abuse of purported jurisdiction of the respondent.

8.7 The respondent, while acknowledging the uncertainty in the availability of renewable energy, appears to suggest that REC is the remedy for such uncertainty and the resultant mismatch between the availability of renewable energy and the requirement of obligated entities to meet the RPO. On the one hand, Captive Consumers would be constrained to reduce the capacity of their CPPs as a consequence of meeting the RPO and then, once the capacity of its CPP is thus

reduced, if electricity from renewable energy sources is not forthcoming and there is a demand-supply gap, the REC is hardly a solution for the industry.

8.8 The respondent has failed to appreciate that the captive consumption saves upto 20% of the transmission and distribution losses otherwise incurred, if this power was to be wheeled from the distant power plants of the Generators through the Distribution Licensees. Furthermore, it also saves concomitant fuel sources and emissions thereof.

8.9 The respondent has failed to appreciate that the Electricity Act 2003 recognizes the need to create competition. Section 61 of the Electricity Act lists out the guiding factors to determine the tariff and sub-section [c] of Section 61 reads as under:

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a [c] the factors which would encourage competition, efficiency, economical use of the resources, good performance and optimum investments.

The respondent has ignored the mandate of the guiding investments. The subject Regulations, which provide for special benefits and special status for producers of renewable energy, in the process creating unequal playing fields between such producers and CPPs are unfair, arbitrary and inconsistent with the object and purport of Section 61[c] of the Electricity Act 2003.

8.10 The respondent has failed to appreciate that the concept of Renewable Energy Certificates is at its nascent stage. The subject Regulations contemplate the concept of Renewable Energy Certificates as provided in the Central Electricity Regulatory Commission (Terms and Conditions for recognition and issues of Renewable energy Certificate for Renewable Energy) Regulations, 2010. Rule 5.1 of the subject Regulations states that the REC issued shall be valid instruments for the discharge of the mandatory obligations set out in the subject Regulations for the obligated entity to purchase electricity from renewable energy sources. That, the mechanism of REC and Power Exchange has not been fully established as on date. In fact, the entire concept and mechanism of RECs and Power Exchange is in its infancy. Even in most of the developed countries, such concepts are at formative stages and is even otherwise, only applicable to distribution licensees and not to CPPs. Thus, levying an obligation on the CPPs without acquisition of large and accurate generates data, development of suitable enforcement mechanism would lead to erratic and adverse results on the industry at large. It was imperative before any such compulsory obligations are created and the mechanism of RECs and Power Exchange are enforced, that the basic groundwork in this respect, the modalities for such certificates and their trading, should have been first worked out and only then, any such regulations be considered. Enforcing regulations without as much as the clarity of concepts in question

and without the mechanism in place, will surely create a chaos and inconceivable difficulty for the CPPs.

8.11 Under the scheme of the Act, both renewable source of energy and co-generation power plant, are equally entitled to be promoted by State Commission through the suitable methods and suitable directions, in view of the fact that co-generation plants, who provide many number of benefits to environment as well as to public at large, are to be entitled to be treated at par with the other renewable energy sources. The intention of the Legislature is to clearly promote co-generation in this industry generally irrespective of the nature of the fuel used for such co-generation and not co-generation or generation from renewable energy sources alone.

8.12 The impugned regulations are in violation of Article 14 of the Constitution of India. That the regulations are one sided in favour of the producers of power from renewable sources and discriminatory qua the captive and open access users.

[i] The respondent has erred in not following the mandate of the Act but rather taking the National Electricity Policy and the Tariff Policy as guiding principles, in implementing the Act.

9. While adopting the submissions made by the learned Senior Counsels appearing for the co-competitioners, Mr. S.N. Soparkar, learned Senior Counsel

appearing for the petitioner in Special Civil Application No.791 of 2011, has contended that the Act requires the SERC to promote both renewable source of energy and co-generation by providing suitable measures, namely, (i) for connectivity with the grid and sale of electricity by such source; (ii) for compulsory purchase of electricity from such source of a specific percentage. The impugned Regulation, which proposes that each distribution licensee and captive and open access user/consumer shall purchase electricity from renewable source at a specified minimum percentage of his/her total consumption within the area of distribution licensee during a year, would run counter to law so enacted by the Act of 2003 by leaving out promotion of co-generation [except for co-generation from bio-fuel] as envisaged by the Act and giving discriminatory treatment to co-generation sources other than bio-fuel including bagasse based resources. Inclusion of CPP within obligated entity under the Regulation is beyond the purview of the Act and the Rules made thereunder in as much as including of CPP would result into significant disadvantage by putting an additional burden on co-generation power plant to purchase power generated from renewable source at a higher cost and without any requirement and, therefore, it would be violative of Articles 14, 19(1)(g) and 301 of the Constitution of India.

9.1 Under the scheme of the Act, both renewable source of energy and co-generation power plant are equally entitled to be promoted by State Commission

through the suitable methods and suitable directions in view of the fact that co-generation plants, who provide many number of benefits to environment as well as to public at large, are to be entitled to be treated at par with the other renewable energy sources. The intention of the legislature is to clearly promote co-generation in the industry generally irrespective of the nature of the fuel used for such co-generation and not co-generation or generation from renewable energy sources alone.

9.2 In the peculiar facts of installation of CPP by the petitioner, it is submitted that the petitioner installed Heat Recovery System Generators [HRSG] which recover heat from exhaust of gas turbines and the same heat is used for industrial purpose and running steam turbines which are, in turn, used for further power generation. Learned Senior Counsel has placed reliance on Section 86(1) of the Act about functions of the State Commission and definition of 'co-generation' under Section 2(12) and submitted that, indisputably, co-generation based on fossil fuel has tremendous scope and significant contribution to the benefit for environment by way of curtailing emissions harmful to the atmosphere. The learned Senior Counsel has also relied upon efficiency factory of power plant based on thermal and combined cycle power plants having co-generation. According to the learned Senior Counsel, since generation includes co-generation, use of the word 'co-generation' separately in Section 86(1)(e) of the Act would be redundant if interpretation is

afforded as canvassed by the learned counsel for the respondent-commission. Reliance is placed on the National Electricity Policy clauses 5.2.26, 5.12.3 and Tariff Policy of 2006 clauses 6.3 and 6.4 in addition to his submission about distinct status of captive power plant.

9.3 Thus, according to the learned Senior Counsel, a plain reading of Section 86(1)(e) of the Act would provide for discharge of following functions: (i) promote co-generation; (ii) promote generation of electricity from renewable source of energy; (iii) provide suitable measures for connectivity with the grid; (iv) for sale of electricity to any person and (v) specify percentage of total consumption of electricity in the area of distribution licensee for purchase of electricity produced by co-generator and generation through renewable source of energy. Inter-alia, reliance is placed on the decision dated 2.12.2013 of the Appellate Tribunal for Electricity in Appeal No.53 of 2012 that purchase obligation under Section 86(1)(e) of the Act can be fastened only from electricity generated from renewable source of energy and a distribution company cannot be fastened with obligation to purchase a percentage of consumption from fossil fuel based co-generation. Even reference is made to various regulations framed by the West Bengal Regulatory Commission for co-generation and generation of electricity from renewable source of energy, Regulations 2008, Rajasthan Electricity

Regulatory Commission and Maharashtra Regulatory Commission exempting grid connected captive generated plants provided that such CPP consume power from fossil fuel based co-generation plants.

10 In support of the above contentions, learned counsels for the petitioners rely upon the judgment of the Appellate Tribunal of Electricity [APTEL], to which reference is made later on.

11 Affidavit-in-reply is filed on behalf of the respondent opposing the petition. In order to sustain the legality of the impugned order and the Regulations, the respondent has highlighted the following aspects:-

11. A reference is made to National Action Plan on Climate Change [for short ©NAPCC] and Eight National Missions formulated thereby representing multi-pronged, long-term and integrated strategies for achieving key goals in the context of climate change. The NAPC also, inter-alia, suggested ©Renewable Energy Technologies Programme© [for short, ©RET©]. While referring to RETs for power generation, it is stated in NAPC with reference to grid connected system that the Electricity Act, 2003 and the Tariff Policy, 2006 provide for both the Central Electricity Regulatory Commission (CERA) and State Electricity Regulatory Commissions (SERC) to prescribe a certain percentage of total power to be purchased from renewable based sources. That, under Section 86 of the Act, functions

of the Commission are prescribed whereby the Commission is required to specify a certain percentage of the ©total consumption© of electricity in the ©area of a distribution licensee© to be purchased from electricity generated from renewable sources. This is known as Renewable Purchase Obligation (RPO). Under Section 3 of the Act, the Central Government has formulated National Electricity Policy and the Tariff Policy. Both these policies recognise that since it will take some time for non-conventional electricity generators to compete effectively with conventional generators, the appropriate Commission may determine differential/preferential tariffs to promote these technologies. That, renewable sources of energy vary widely from one State/Region to another and as such it would be easy to meet RPO at 5% in some States whereas in other States it would be difficult and, therefore, the concept of a tradable Renewable Energy Certificate (REC) is introduced. Renewable energy generators would be issued RECs to the extent of power sold by them over and above the RPO. These RECs will be tradable, i.e. the same can be sold to purchasers in States where it is difficult to meet the RPO. The REC value is determined by a free market price discovery process through a ©power exchange.© In this manner, it can be ensured that renewable energy generators recover their costs and the RPO is in effect achieved in all States. CERC has framed regulations in exercise of power conferred under 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. These regulations were notified on 14.1.2010 and are called as ©Central Electricity Regulatory Commission (Terms and Conditions for recognition and issuance of Renewable Energy Certificate for Renewable Energy Generation) Regulations, 2010©. In the context of the above, it is submitted that the RPO is percentage of ©consumption© of electricity. The category of the consumer is not material in as much as the policy objective is to ensure that 5% of the total electricity consumed be generated from renewable sources. In order to achieve this policy objective, it is necessary to impose RPO uniformly so as to ensure in totality 5% of the total electricity consumed be generated from renewable sources and, therefore, it is necessary that RPO is to be imposed under Section 86(1)(e) of the Act on distribution licensees, open access consumers as well as captive generation consumers as a regulatory measure.

11.2 Following preliminary objections are raised by the respondent with regard to maintainability of the petitions under Articles 226 and 227 of the Constitution of India.

11.3 That the Commission considered the submissions/ comments/ objections received from four objectors even after the stipulated time of filing the objection. Thereafter, hearing took place before the Commission on 4.3.2010 and, after following due procedure, the Regulation was published on 26.5.2010.

The Regulations shall come into force from a date to be notified by the Commission separately, since the mechanism of REC was not in force on the date of notification of the Regulations. Thus, the said Regulations are yet to be made applicable to the petitioners having captive generating plant referred to in clause 8 of the said Regulations.

11.4 The petitioners have alternative efficacious remedy before the Appellate Tribunal to challenge the order impugned.

11.5 There is delay in filing the petitions challenging the impugned order.

11.6 The petitions are also not maintainable as REC Mechanism has been launched as per the report of Press Information Bureau dated 18.11.2010. It is stated in the Report that under this mechanism the RE Generator can sell the electricity component locally at the price of conventional electricity and trade the environmental attribute in the form of REC separately. Further, SERCs of other States have also framed similar Regulations.

11.7 The present petitions are filed only with a view to restrict the process the implementation of statutory provisions and National Action Plan of the Government of India for Climate Change.

12 Shri Kamal Trivedi, learned Senior Counsel

appearing with Mr. Bhargav Karia for GERC made following submission on behalf of the respondents:

[I] According to learned Senior Counsel rationale for providing Renewable Purchase Obligation has its genesis in the Standing Committee on Energy (2002) Thirteen Lok Sabha in its 31st Report in the Electricity Bill, 2001 in para nos. (I)(v) of 1.16, para 3,18, 3.20 and 3.21 emphasized the need to promote non-conventional and renewable source based generation along with National Electricity Plan and Policy. GERC has published the Regulations under section 86(1)(e) read with section 181 of the Act.

[II] It is submitted that whether the word 'and' appearing in between co-generation and generation in Section 86(1)(e) of the Electricity Act, 2003 is disjunctive or conjunctive is required to be interpreted in its true perspective.

[i] The word 'and' between the words 'co-generation' and 'generation' is conjunctive and not disjunctive. Co-generation and generation are process or method of production of electricity in which the sources are utilized to get the final result.

[ii] The aforesaid submission is further fortified by the use of the word 'sources' as appearing in Section 86(1)(e) as qualifying both generation and co-generation of electricity. The emphasis in Section 86(1)(e) is on the 'sources' of the energy and not on the 'technology' of production. The intention behind Section 86(1)(e) is to promote non-conventional and renewable sources of energy and not to promote fossil fuels.

[iii] In the above interpretation the words 'for purchase of electricity from such sources' have purposive interpretation to all words of the sentence because it gives meaning that the co-generation and generation from renewable sources are required to be promoted. The 'co-generation' and 'generation' of electricity as stated in the said section are both processes meant to utilize the input fuel which should be based on renewable energy sources. This would give a proper legal meaning to the section.

(iv) In support of the submission that the word 'and' between co-generation and generation is to be read as conjunctive and not disjunctive, reliance is placed on the decision of the Hon'ble Supreme Court in the case of Municipal Corporation of Delhi vs. Tek Chand Bhatia, reported in (1980) 1 SCC

158 (paras 5 and 10).

[III] Applicability of Renewable Power Purchase Obligation to captive power plant owners who consume electricity from conventional or fossil fuel based generation.

In Section 86(1)(e) of the Act, it is stated that the Commission is required to specify, purchase of electricity from such sources a percentage of the total consumption of electricity in the area of distribution licensee. Here, the emphasis is on the words 'total consumption' and 'in the area of distribution licensee' for interpretation. On a combined reading of Section 2(3) and Section 86(1)(e) of the Act, it is clear that the area of distribution licensee referred to in the said section would mean the distribution license supply area in which the consumer receives power supply either from distribution licensee or from a third party through open access or from his power plant (Captive Generating Plant). Hence, while determining the total consumption of the electricity in the area of the distribution licensee consumption from all the above categories of persons is required to be considered. Thus, the said section recognizes that 'Renewable Purchase Obligation' is applicable to the total consumption. It is submitted that all the captive generating plants