

**BEFORE THE GUJARAT ELECTRICITY REGULATORY COMMISSION
GANDHINAGAR**

Petition No.1781/2019.

In the Matter of:

Petition under Regulation 5 of GERC (Procurement of Energy from Renewable Sources) Regulations, 2010 and subsequent amendments thereto.

Petitioner : Reliance Industries Limited

Represented By : Ld. Adv. Mr. Yash Dadhich alongwith Mr. Anant Kapse and
Mr. Bhadresh Chauhan

CORAM:

**Anil Mukim, Chairman
Mehul M. Gandhi, Member**

Date: 13/11/2024.

DAILY ORDER

- 1) The matter was kept for hearing on 12.11.2024.
- 2) Ld. Adv. Mr. Yash Dadhich appearing on behalf of the Petitioner submitted that the present Petition is filed for seeking appropriate directions under the provisions of the GERC (Procurement of Energy from Renewable Sources) Regulations, 2010 and its subsequent amendments thereto that the REC purchased by the Petitioner in the month of April, 2018 be considered for balance shortfall of RPO obligation for the FY 2017-18 and allow the Petitioner to roll over balance purchase of REC of the FY 2017-18 to FY 2018-19 and also allow the Petitioner to use Solar REC to meet its obligation for Non-Solar REC RPO and vice versa for FY 2018-19.
 - 2.1. He further submitted that the Petitioner has earlier filed other Petitions seeking relief for rollover of RPO before the Commission which were heard by the different bench of the Commission. In the above Petitions also, the Commission has invited comments and suggestions from the Stakeholders by directing the Petitioner to issue public notice and invite comments and suggestions which were complied with by the Petitioner. Similar Procedure need to be followed in the present matter also. Accordingly, the decision of the Commission in this matter with regards to prepublication and invite comment/suggestions from the stakeholders is to be also relevant and applicable as decided in above pending matter.
- 3) We have considered the submissions of the Petitioner. We note that the Petitioner is seeking direction of the Commission that the REC purchased by the Petitioner in the month of April, 2018 is to be considered for balance shortfall of RPO obligation for the FY 2017-18 and to allow the Petitioner to roll over balance purchase of REC of the FY 2017-18 to FY 2018-19 in terms of the provisions of the GERC (Procurement of Energy from

Renewable Sources) Regulations, 2010 and its subsequent amendments. The Petitioner has further sought relief to allow the Petitioner to use Solar REC to meet its obligation for Non-Solar REC RPO and vice versa for FY 2018-19.

- 3.1. We also note that the Petitioner is as such seeking carry forward of its RPO compliance from FY 2017-18 to FY 2018-19. Hence, we are of the view that it is necessary to hear stakeholders etc. prior to granting the prayers in the present matter for which, the Petitioner is required to give public notice in two daily newspapers, one in English language and one in vernacular language having wide circulation and invite suggestions/views/comments/objections from the stakeholders on the present Petition and thereafter, the Commission can decide the matter.
 - 3.2. Accordingly, we hold that a public hearing needs to be conducted to take into consideration the views/comments/suggestions/objections of the stakeholders before deciding the present matter. The Petitioner is, therefore, directed to issue a public notice in two daily Gujarati Newspapers and one English Newspaper having wide circulation in the State/National level stating that they have filed Petition No. 1781 of 2019 before the Commission praying to carry forward the RPO compliance of FY 2017-18 to FY 2018-19 in respect of fulfilment of Renewable Purchase Obligations (RPO) in terms of Regulations of the GERC (Procurement of Energy from Renewable Sources) Regulations, 2010 and its subsequent amendments. The Petitioner is also directed to upload the present Petition with all the documents on its website and invite comments and suggestions from the stakeholders on the said Petition on affidavit within 30 days from the date of issuance of public notice. The Petitioner shall also state in the public notice that the stakeholders/objectors shall file their objections/suggestions in the Petition to the Secretary, Gujarat Electricity Regulatory Commission, 6th Floor, GIFT ONE, Road 5C, Zone 5, GIFT City, Gandhinagar - 382050 in five copies along with affidavit in support of their submissions with a direct copy to the Petitioner. Upon receipt of the comments/views/objections/suggestions from the stakeholders, the Petitioner is at liberty to file its reply, if any, to the Commission.
 - 3.3. The staff of the Commission is also directed to upload the Petition along with all relevant documents on the website of the Commission inviting comments/objections/suggestions/views from stakeholder with published copy of public notices issued by the Petitioner.
 - 3.4. The staff of the Commission is also directed to inform/issue hearing notice for the present Petition to stakeholders/objectors who file their submissions/objections/comments before the Commission in the present matter.
- 4) Next date of hearing will be intimated separately.
 - 5) Order accordingly.

Sd/-
[Mehul M. Gandhi]
Member

Sd/-
[Anil Mukim]
Chairman

Place: Gandhinagar.
Date: 13/11/2024.

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AMENDED MEMO OF PETITION

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

PETITION NO. 1781 OF 2019

IN THE MATTER OF : Regulation 5 of Gujarat Electricity Regulatory Commission
(Procurement of Energy from Renewable Sources)
Regulations, 2010.

AND

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

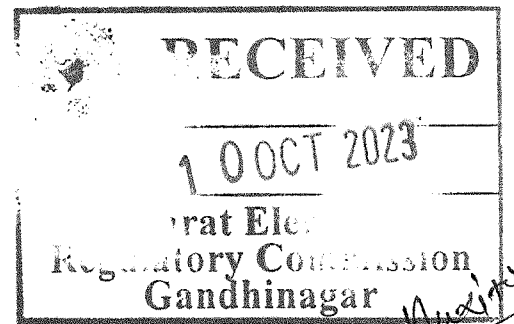
AND

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

AND

IN THE MATTER OF:

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



...Petitioner

MOST RESPECTFULLY SHEWETH THAT:

Preamble

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

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

2. On 8th January, 2010, the Hon'ble Commission notified draft Regulations for promoting sale of power from renewable sources energy to any person and for procurement of energy from renewable sources by distribution licensees within the State of Gujarat vide Notification No. 1 of 2010. On the same day, the Hon'ble Commission issued Public Notice for filing objections/ suggestions regarding the draft Regulations proposed as aforesaid.
3. On 4th March, 2010, the Hon'ble Commission conducted a public hearing for the draft Regulations. The Petitioner participated at the hearing and made oral submissions and produced documents in support of their objections and suggestions. The Petitioner craves leave to refer to and rely upon such documents produced before the GERC at time of hearing, if and when necessary.
4. On 17th April, 2010, the Hon'ble Commission issued Notification No. 3 of 2010 containing the Regulations called as "Gujarat Electricity Regulatory Commission (Procurement of Energy from Renewable Sources) Regulations, 2010" hereinafter referred to as "Regulations". Annexed hereto and marked as Annexure-"A" is a copy of the said Regulations.
5. On 1st July, 2015, the Hon'ble Commission issued Notification No.2 of 2015 wherein the Renewable Purchase Obligation (RPO) was made applicable on captive users with effect from 1st July, 2015. Annexed hereto and marked as Annexure-"B" is a copy of the said notification.
6. The Petitioner is filing the present Application seeking appropriate directions under Regulation 5 of Gujarat Electricity Regulatory Commission (Procurement of Energy from Renewable Sources) Regulation 2010 and also under Regulation 84 of GERC (Conduct of Business Regulations) in respect of purchase of balance REC certificate for the FY 2017-2018.

BACKGROUND FACTS:

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

5. Certificates under the Regulations of the Central Commission

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

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

- 5.2 Subject to such direction as the Commission may give from time to time, the obligated entity shall act consistent with the Central Electricity Commission's (Terms and Conditions for recognition and issuance of Renewal Energy Certificate for Renewable Energy Generation) Regulations, 2010 notified by the Central Electricity Regulatory Commission with regards to the procurement of the certificates for fulfilment of the Renewal Purchase Obligation under these Regulations.
- 5.3 The Certificates purchased by the obligated entities from the power exchange in terms of the regulation of the Central Commission mentioned in clause 5.1 of these Regulations shall be deposited by the obligated entities with the Commission within 15 days of the purchase."

9. Consequences of default

9.1.....

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

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

8. The Petitioner states that being aggrieved by the said Regulations, Petitioner challenged the same before the Hon'ble High Court of Gujarat, by filing Special Civil Application No. 791 of 2011. The Petitioner filed the Petition, inter alia, on the basis that inclusion of all captive users of electricity including those producing electricity through cogeneration within the "obligated entity" has led to absurd result, viz. that, far from putting the co-generators on par with renewable source of energy, the impugned Regulations actually put them at a significant disadvantage, by putting an additional burden on cogeneration power plants to purchase power generated from renewable sources at a higher costs and without there being any requirement for such power. The Hon'ble Gujarat High Court, by its common judgment and order dated 12th March, 2015, rejected the Petition filed by the Petitioner and other parties. Annexed hereto and marked as **Annexure-"C"** is copy of Order dated 12th March, 2015 passed by Hon'ble Gujarat High Court.
9. The Petitioner states that being aggrieved by the common judgment/ Order dated 12th March, 2015, the Petitioner filed Letters Patent Appeal No.832 of 2015 before the Hon'ble Gujarat High Court. In the said Appeal, the Petitioner had also filed a Civil Application No. 4804 of 2015 seeking stay of the impugned Judgment and Order dated 12th March, 2015. On 5th May, 2015, the Hon'ble Gujarat High Court disposed of the said Application by passing following order:
- “1.....
8. Therefore, instead of granting stay of the impugned Judgment and Order it shall be in the interest of justice to observe that the said Regulations shall though come in to force they shall be subject to the final decision given in the Appeals. Applications are disposed of accordingly. Rule is discharged accordingly.”
- Annexed hereto and marked as **Annexure-"D"** is copy of Order dated 5th May, 2015 passed by the Hon'ble Gujarat High Court.
10. The Petitioner states that on 14th January, 2010, Central Electricity Regulatory Commission ("CERC") notified "CERC (REC) Regulations. The CERC, in consultation with Central Agencies and Forum of Regulators from time to time provide for floor price and forbearance price separately for solar and non-solar renewable energy certificate. Annexed hereto and marked as **Annexure-"E"** is a copy of the Central Electricity Regulatory Commission (Terms and Conditions for Recognition and Issuance of Renewable Energy Certificate for Renewable Energy Generation), Regulation 2010.
11. On 4th March, 2014, GERC issued Gujarat Electricity Regulatory Commission (Procurement of Energy from Renewable Sources) (First Amendment) Regulations, 2014. By the said Regulations, GERC specified the minimum quantum of purchase from the renewable energy sources for the FY 2010-11 till FY 2016-17. Annexed hereto and marked as **Annexure-"F"** is copy of said Regulations.

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

(i) Non-solar RECS		
	Till 31.03.2017 (Rs./MWH)	W.E. 011.04.2017 (Rs./MWH)
Forbearance Price	3300	3000
Floor Price	1500	1000
(ii) Solar RECs		
Forbearance Price	5800	2400
Floor Price	3500	1000

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

13. Petitioner states that being aggrieved by the CERC's Order dated 30th March, 2017 reducing the prices of REC, the same was challenged by (i) Green Energy Association vide Appeal No. 95 of 2017 and (ii) Indian Wind Power Association by filing Appeal No. 105 of 2017 before the Hon'ble Appellate Tribunal for Electricity ("APTEL").
14. The Petitioner states that on 25th April, 2017, the Hon'ble APTEL admitted the Appeals filed by Indian Wind Power Association and Green Energy Association. However, the Hon'ble APTEL refused to grant stay on the Order dated 30th March, 2017. Annexed hereto and marked as **Annexure-"H"** is copy of APTEL's Order dated 25th April, 2017.
15. Being aggrieved by the Order dated 25th April, 2017 passed by the Hon'ble APTEL, Indian Wind Power Association and Green Energy Association filed Civil Appeals before the Hon'ble Supreme Court of India. The Hon'ble Supreme Court, by its Order dated 8th May, 2017 stayed the Order passed by Ld. CERC. Annexed hereto and marked as **Annexure-"I"** is copy of Order dated 8th May, 2017.
16. The Petitioner states that in compliance of the Hon'ble Supreme Court's order dated 8th May, 2017, Indian Energy Exchange ("IEX"), by its Circular No. IEX/MO/242/2017 dated 26th May, 2017 suspended trading of REC. Annexed hereto and marked as **Annexure- "J"** is copy of the aforesaid Circular issued by IEX.
17. The Petitioner states that on 14th July, 2017, the Hon'ble Supreme Court disposed of the Appeal filed by non-solar energy producers with directions that (i) REC shall be traded at floor price as per Order of CERC dated 30th March, 2017 and (ii) difference between the earlier floor price and present floor price shall be deposited by the obligated entity with the

- Ld. CERC. Annexed hereto and marked as Annexure- "K" is copy of Order dated 14th July, 2017.
18. The Petitioner states that in view of Hon'ble Supreme Court order dated 14th July, 2017, IEX, by its circular no. IEX/IMO/248/2017 dated 24th July, 2017, recommenced trading of Non Solar REC. By the said circular, the IEX also informed that trading of Solar REC shall remain suspended till further notice. Annexed hereto and marked as Annexure-"L" is copy of circular dated 24th July, 2017 issued by IEX.
19. It is stated that on 20th September, 2017, the Hon'ble Supreme Court disposed of the Appeal filed by Green Energy Association. By the said Order, the Hon'ble Supreme Court allowed Ld. CERC to extend REC until 31st March, 2018. The said order was continued till Ld. APTEL deciding the Appeal. Annexed hereto and marked as Annexure-"M" is copy of order dated 20th September, 2017.
20. The Petitioner states that on 12th April, 2018, the Ld. APTEL rejected the Appeals filed by Indian Wind Power Association and Green Energy Association upholding the Order passed by CERC. Annexed hereto and marked as Annexure-"N" is copy of the said Order dated 12th April, 2018.
21. It is stated that pursuant to Hon'ble Supreme Court order and Hon'ble APTEL's order, on 23rd April, 2018, the Ld. CERC was pleased to issue following directions:-
- trading of RECS (Solar and Non-Solar) shall be carried out henceforth in accordance with the Commission's Order dated 30.03.2017 in Petition No.2/SM/2017.
 - deposit of the differential amount of Rs.500/- per REC with the Commission shall be discontinued. Annexed hereto and marked as Annexure-"O" is copy of the Letter dated 23rd April, 2018 issued by CERC.
22. The Petitioner states that Indian Wind Power Association challenged the Order dated 12th April, 2018, by filing Civil Appeal (being Appeal No. 4801 of 2018) before Hon'ble Supreme Court. The Hon'ble Supreme Court, by its order dated 8th May, 2018, was pleased to admit the Appeal and continue interim orders dated 8th May, 2017 and 14th July, 2017. Annexed hereto and marked as Annexure-"P" is copy of Order dated 14th May, 2018.
23. On 24th April, 2018, the Ld. GERC issued Gujarat Electricity Regulatory Commission (Procurement of Energy From Renewable Sources) (Second Amendment) Regulations, 2018. By the said Amendment, it substituted the following Table - I and II:-

“TABLE-I

Year	Minimum Quantum of purchase (in %) from renewable energy sources (in terms of energy in KWh.)			
	Wind	Solar	Others	Total

	(%)	(%)	(Biomass, Bagasee, Hydro and MSW) (%)	(%)
(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, Bagasee, MSW and Hydro) (%)	Total (%)
(1)	(2)	(3)	(4)	(5)
2017-18	7.75	1.75	0.5	10.00
2018-19	7.95	4.25	0.5	12.70
2019-20	8.05	5.5	0.75	14.30
2020-21	8.15	6.75	0.75	15.65
2021-22	8.25	8.0	0.75	17.00

4) Substitution of para 2 of Principal Regulation 4.1:

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

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

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

- (i) there was no RPO specified for the year 2017-18 by Hon'ble Commission, it was specified only on 21st April, 2018;
- (ii) there was no trading of solar RECs from May 2017 till March 2018 as the Order passed by CERC was stayed by the Hon'ble Supreme Court in Appeal filed by Solar Energy Producers;

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

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

SUBMISSIONS OF THE PETITIONER:

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

REC Market Analysis

a. Non-Solar RECs

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

b. Solar RECs

Sr. No.	Description	2015-16	2016-17	2017-18
1.	Opening balance REC	15,99,598	33,10,962	49,08,376
2.	Additional in REC	23,75,443	21,85,291	13,33,925
3.	REC sold	6,48,201	5,57,014	2,08,402
4.	REC Retained by Generator	15,878	30,863	35,798
5.	Closing balance REC (available)	33,10,962	49,08,376	59,98,101

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

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

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

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

8.2

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

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

26. The Petitioner submits that in view of the events which occurred subsequent to the order dated 5th May, 2015 and the orders passed by Ld. APTEL and Hon'ble Supreme Court in respect of trading of REC, there was a great deal of uncertainty in compliance of obligations under the impugned regulations. In terms of order dated 5th May, 2015, the impugned regulations are subject to outcome of the present Appeal.
27. The Petitioner submits that since matter related to RPO on Cogeneration captive plants is sub-judice and pending before the Hon'ble Gujarat High Court, the Petitioner purchased Non Solar REC for its RPO on coal based power plants at its Hazira and Dahej facility. in anticipation of RPO of FY 2017-18. Due to non-availability of sufficient Non-Solar REC, the Petitioner was able to get 92% of what it bid. The Petitioner again in anticipation, purchased some quantity of Non Solar REC in April 2018 to meet balance Non-Solar REC for FY 2017-18 and remaining REC to be utilised for its RPO in FY 2018-19.
28. The Petitioner submits that REC targets for the FY 2017-18 were notified this year. The Petitioner submits that they have purchased Non-Solar REC certificates for the FY 2017-18 in the month of March 2018. The Petitioner submits that in the Month of March 2018, selling bid for Non-Solar REC was lower than the Purchase bid, at the end of trade, all the sell bid got cleared. The Petitioner submits that only 92% of their buy bid of Non-Solar REC got cleared thereby making shortfall of 8% of the required compliance. The Petitioner submits that on issuance of RPO targets for FY 2017-18, the Petitioner found that it has purchased 13,998 number of Non-Solar REC less due to non- availability of Non-Solar REC and 41,569 number of Solar REC less due to stoppage of trade by Hon'ble Supreme Court order. Annexed hereto and marked as Annexure-"R" is a copy of IEX REC trade details.
29. The Petitioner submits that there are not sufficient quantity of Non- Solar REC available in the market, Solar REC are available in sufficient quantity. As per clause 5.1 of the Regulations, in the event of the obligated entity fulfilling the renewable purchase obligation by purchase of certificates, the obligation to purchase electricity from generation based on renewable energy other than solar can be fulfilled by purchase of non-solar certificates and

the obligation to purchase electricity from generation based on solar as renewable energy source can be fulfilled by purchase of solar certificates only. If solar certificates are not available in a particular year, then in such cases, additional non-solar certificates shall be purchased for fulfilment of the RPO in accordance with Table 1. However, vice versa is not permitted, like in current scenario, Solar REC are available in the market but Obligated Entities cannot fulfil its Non-Solar RPO obligation through purchase of Solar REC.

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

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

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

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

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

11

“1.

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

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

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

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

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

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

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

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

33C. The Petitioner submits that based on the aforesaid clarification dated 01.10.2019 of the MOP, the Odisha Electricity Regulatory Commission (hereinafter referred to as “OERC”) was

pleased to issue Notification dated 31.12.2019 regarding capping of RPO. The OERC, in exercise of its power to remove difficulties was pleased to issue following directions:-

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

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

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

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

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

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

10. The Commission underscores that in its earlier Orders dated 27 March 2019 and 22 May 2019 in Case No. 36 of 2019 and 71 of 2019,

respectively, it has asked to initiate the proceedings of RPO compliance by CPPs from FY 2014-15 to FY 2016-17 and to address the MoP's clarifications in those proceedings. However, due to various reasons such proceedings have not been initiated. **It is also a fact that RPO-REC Regulations 2016 have been challenged before the Hon'ble Bombay High Court by CPPA and the matter is still pending adjudication.**

.....

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

(relevant extract, emphasis added)

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

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

PRAYERS

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

- (a) that this Hon'ble Commission be pleased to pass appropriate directions that REC purchased by the Petitioner in the month of April, 2018, be considered for balance shortfall of RPO obligation for the FY 2017-18;
- (b) that this Hon'ble Commission be pleased to allow Petitioner to roll over balance RPO of the FY 2017-18 to FY 2018-19 or the FY in which this petition is disposed off, whichever is later;

- (c) that this Hon'ble Commission be pleased to allow the Petitioner to use Solar REC to meet its obligation for Non-Solar REC RPO and vice-versa for FY 2018-19;
- (c-1) Considering Government of India, Ministry of Power's circular dated 01.02.2019 and 01.10.2019 for capping of the RPO for captive power plants as per the Ministry of Power's Clarification orders and Draft Regulations to that effect published by GERC, it is requested to revise the RPO rate applicable for the CPPs in the Regulation 4 as per the GOI, Ministry of Power letter dated 01.10.2019 and the same is considered for present roll over request prayed in the captioned Petition;
- (c-2) that this Hon'ble Commission be pleased to revise the RPO targets for the FY 2017-2018;
- (d) any other order this Hon'ble Commission may deem fit in the matter.

DECLARATION

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



Place: Ahmedabad

Date: 10.10.2023

For, Gandhi Law Associates

Advocates for Petitioner

UNDERTAKING

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

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



Place: Ahmedabad

Date: 10.10.2023

For, Gandhi Law Associates

Advocates for Petitioner

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

PETITION NO. OF 2019

IN THE MATTER OF:

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

... Petitioner

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Place: Ahmedabad
Date: 08/02/2019

For Nanavati Associates
Advocates for Petitioner

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

PETITION NO. OF 2019

IN THE MATTER OF:

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



AND

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

AND

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

AND

IN THE MATTER OF:

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

... Petitioner

MOST RESPECTFULLY SHEWETH THAT:

Preamble

1. The Petitioner is in the business, inter alia, of producing Petrochemicals and has Captive Power Plants at all major sites of their industries in the State fulfilling the energy requirements of their industries through captively produced power. In these power plants, which are liquid fluid or gas based, heat is cogenerated as a by-

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

2. On 8th January, 2010, the Hon'ble Commission notified draft Regulations for promoting sale of power from renewable sources energy to any person and for procurement of energy from renewable sources by distribution licensees within the State of Gujarat vide Notification No. 1 of 2010. On the same day, the Hon'ble Commission issued Public Notice for filing objections/ suggestions regarding the draft Regulations proposed as aforesaid.
3. On 4th March, 2010, the Hon'ble Commission conducted a public hearing for the draft Regulations. The Petitioner participated at the hearing and made oral submissions and produced documents in support of their objections and suggestions. The Petitioner craves leave to refer to and rely upon such documents produced before the GERC at time of hearing, if and when necessary.
4. On 17th April, 2010, the Hon'ble Commission issued Notification No. 3 of 2010 containing the Regulations called as "Gujarat Electricity Regulatory Commission (Procurement of Energy from Renewable Sources) Regulations, 2010" hereinafter referred to as "Regulations".

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Annexed hereto and marked as **Annexure-"A"** is a copy of the said Regulations.

5. On 1st July, 2015, the Hon'ble Commission issued Notification No.2 of 2015 wherein the Renewable Purchase Obligation (RPO) was made applicable on captive users with effect from 1st July, 2015. Annexed hereto and marked as **Annexure-"B"** is a copy of the said notification.

6. The Petitioner is filing the present Application seeking appropriate directions under Regulation 5 of Gujarat Electricity Regulatory Commission (Procurement of Energy from Renewable Sources) Regulation 2010 and also under Regulation 84 of GERC (Conduct of Business Regulations) in respect of purchase of balance REC certificate for the FY 2017 - 2018.

BACKGROUND FACTS:

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

5. Certificates under the Regulations of the Central Commission

- 5.1. *Subject to the terms and conditions contained in these Regulations, the Certificates issued under the Central Electricity Regulatory Commission's (Terms and Conditions for recognition and issuance of Renewal Energy Certificate for Renewable Energy Generation) Regulations, 2010 shall be the valid instruments for discharge of the*

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mandatory obligations set out in these Regulations for the obligated entity to purchase electricity from renewable energy sources.

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

- 5.2 Subject to such direction as the Commission may give from time to time, the obligated entity shall act consistent with the Central Electricity Commission's (Terms and Conditions for recognition and issuance of Renewal Energy Certificate for Renewable Energy Generation) Regulations, 2010 notified by the Central Electricity Regulatory Commission with regards to the procurement of the certificates for fulfilment of the Renewal Purchase Obligation under these Regulations.
- 5.3 The Certificates purchased by the obligated entities from the power exchange in terms of the regulation of the Central Commission mentioned in clause 5.1 of these Regulations shall be deposited by the obligated entities with the Commission within 15 days of the purchase."

9. Consequences of default

9.1

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

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

8. The Petitioner states that being aggrieved by the said Regulations, Petitioner challenged the same before the Hon'ble High Court of Gujarat, by filing Special Civil Application No. 791 of 2011. The Petitioner filed the Petition, *inter alia*, on the basis that inclusion of all captive users of electricity including those producing electricity through cogeneration within the “obligated entity” has led to absurd result, viz. that, far from putting the co-generators on par with renewable source of energy, the impugned Regulations actually put them at a significant disadvantage, by putting an additional burden on cogeneration power plants to purchase power generated from renewable sources at a higher costs and without there being any requirement for such power. The Hon'ble Gujarat High Court, by its common judgment and order dated 12th March, 2015, rejected the Petition filed by the Petitioner and other parties. Annexed hereto and marked as **Annexure-“C”** is copy of Order dated 12th March, 2015 passed by Hon'ble Gujarat High Court.

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

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

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

10. The Petitioner states that on 14th January, 2010, Central Electricity Regulatory Commission (“CERC”) notified “CERC (REC) Regulations. The CERC, in consultation with Central Agencies and Forum of Regulators from time to time provide for floor price and forbearance price separately for solar and non-solar renewable energy certificate. Annexed hereto and marked as **Annexure-“E”** is a copy of the Central Electricity Regulatory Commission (Terms and Conditions for Recognition and Issuance of Renewable Energy Certificate for Renewable Energy Generation), Regulation 2010.
11. On 4th March, 2014, GERC issued Gujarat Electricity Regulatory Commission (Procurement of Energy from Renewable Sources) (First Amendment) Regulations, 2014. By the said Regulations, GERC specified the minimum quantum of purchase from the renewable energy sources for the FY 2010-11 till FY 2016 – 17. Annexed hereto and marked as **Annexure-“F”** is copy of said Regulations.
12. The Petitioner states that CERC, on a suo motu Petition being Petition No. 99 of 2010 prescribed forbearance price and floor price for dealing in Renewable Energy Certificate (“REC”) under CERC (REC) Regulations, 2010. CERC, vide its Order dated 30th March, 2017 reduced the price of REC with effect from 1st April, 2017 as under:

(i) Non-solar RECS

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

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

13. Petitioner states that being aggrieved by the CERC's Order dated 30th March, 2017 reducing the prices of REC, the same was challenged by (i) Green Energy Association vide Appeal No. 95 of 2017 and (ii) Indian Wind Power Association by filing Appeal No. 105 of 2017 before the Hon'ble Appellate Tribunal for Electricity (“APTEL”).
14. The Petitioner states that on 25th April, 2017, the Hon'ble APTEL admitted the Appeals filed by Indian Wind Power Association and Green Energy Association. However, the Hon'ble APTEL refused to grant stay on the Order dated 30th March, 2017. Annexed hereto and marked as **Annexure-“H”** is copy of APTEL's Order dated 25th April, 2017.
15. Being aggrieved by the Order dated 25th April, 2017 passed by the Hon'ble APTEL, Indian Wind Power Association and Green Energy Association filed Civil Appeals before the Hon'ble Supreme Court of India. The Hon'ble Supreme Court, by its Order dated 8th May, 2017 stayed the Order passed by Ld. CERC. Annexed hereto and marked as **Annexure-“I”** is copy of Order dated 8th May, 2017.

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16. The Petitioner states that in compliance of the Hon'ble Supreme Court's order dated 8th May, 2017, Indian Energy Exchange ("IEX"), by its Circular No. IEX/MO/242/2017 dated 26th May, 2017 suspended trading of REC. Annexed hereto and marked as **Annexure-"J"** is copy of the aforesaid Circular issued by IEX.
17. The Petitioner states that on 14th July, 2017, the Hon'ble Supreme Court disposed of the Appeal filed by non-solar energy producers with directions that (i) REC shall be traded at floor price as per Order of CERC dated 30th March, 2017 and (ii) difference between the earlier floor price and present floor price shall be deposited by the obligated entity with the Ld. CERC. Annexed hereto and marked as **Annexure-"K"** is copy of Order dated 14th July, 2017.
18. The Petitioner states that in view of Hon'ble Supreme Court order dated 14th July, 2017, IEX, by its circular no. IEX/IMO/248/2017 dated 24th July, 2017, recommenced trading of Non Solar REC. By the said circular, the IEX also informed that trading of Solar REC shall remain suspended till further notice. Annexed hereto and marked as **Annexure-"L"** is copy of circular dated 24th July, 2017 issued by IEX.
19. It is stated that on 20th September, 2017, the Hon'ble Supreme Court disposed of the Appeal filed by Green Energy Association. By the said Order, the Hon'ble Supreme Court allowed Ld. CERC to extend REC until 31st March, 2018. The said order was continued till Ld. APTEL deciding the Appeal. Annexed hereto and marked as **Annexure-"M"** is copy of order dated 20th September, 2017.
20. The Petitioner states that on 12th April, 2018, the Ld. APTEL rejected the Appeals filed by Indian Wind Power Association and Green Energy Association upholding the Order passed by CERC. Annexed hereto

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and marked as **Annexure-“N”** is copy of the said Order dated 12th April, 2018.

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

- a. trading of RECs (Solar and Non-Solar) shall be carried out henceforth in accordance with the Commission's Order dated 30.03.2017 in Petition No.2/SM/2017.
- b. deposit of the differential amount of Rs.500/- per REC with the Commission shall be discontinued.

Annexed hereto and marked as **Annexure-“O”** is copy of the Letter dated 23rd April, 2018 issued by CERC.

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

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

“TABLE - I

Year	Minimum Quantum of purchase (in %) from renewable energy sources (in terms of energy in KWh).			
	Wind (%)	Solar (%)	Others (Biomass, Bagasee, Hydro and MSW) (%)	Total (%)
(1)	(2)	(3)	(4)	(5)

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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, Bagasee, MSW and Hydro) (%)	Total (%)
(1)	(2)	(3)	(4)	(5)
2017 - 18	7.75	1.75	0.5	10.00
2018 - 19	7.95	4.25	0.5	12.70
2019 - 20	8.05	5.5	0.75	14.30
2020 - 21	8.15	6.75	0.75	15.65
2021 - 22	8.25	8.0	0.75	17.00

4) Substitution of para 2 of Principal Regulation 4.1:

If the 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."

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

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

- (i) there was no RPO specified for the year 2017-18 by Hon'ble Commission, it was specified only on 21st April, 2018;
- (ii) there was no trading of solar RECs from May 2017 till March 2018 as the Order passed by CERC was stayed by the Hon'ble Supreme Court in Appeal filed by Solar Energy Producers;

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

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

SUBMISSIONS OF THE PETITIONER:

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

REC Market Analysis

a. Non-Solar RECs

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

b. Solar RECs

Sr. No.	Description	2015-16	2016-17	2017- 18
1.	Opening balance REC	15,99,598	33,10,962	49,08,376
2.	Addition in REC	23,75,443	21,85,291	13,33,925
3.	REC Sold	6,48,201	5,57,014	2,08,402

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4.	REC Retained by Generator	15,878	30,863	35,798
5.	Closing balance REC	33,10,962	49,08,376	59,98,101

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

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

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

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

8.2.....

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

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

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

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

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by purchase of non-solar certificates and the obligation to purchase electricity from generation based on solar as renewable energy source can be fulfilled by purchase of solar certificates only. If solar certificates are not available in a particular year, then in such cases, additional non-solar certificates shall be purchased for fulfilment of the RPO in accordance with Table 1. However, vice versa is not permitted, like in current scenario, Solar REC are available in the market but Obligated Entities cannot fulfil its Non-Solar RPO obligation through purchase of Solar REC.

30. The Petitioner submits that the Hon'ble Supreme Court had suspended trading of Solar REC, and as Non-Solar REC were not available in the market, the Petitioner were not able to purchase required number of Solar and Non-solar REC and there was no RPO target set in for the FY 2017-18 by the Hon'ble Commission. The Petitioner submits that for the Financial Year 2017-18 RPO obligation, the Petitioner purchased the balance 13,998 number of Non Solar REC and 41,569 number of Solar REC in the month of April 2018 (on first trade itself).
31. In the abovementioned circumstances, the Petitioner is humbly requesting Hon'ble Commission to allow the Petitioner to roll over balance REC of the year 2017-18 to FY 2018-19 and to pass directions that REC purchased by the Petitioner in the month of April, 2018 be considered for balance shortfall of RPO obligation for the FY 2017-18.
32. The Petitioner respectfully submits to this Hon'ble Commission that availability of Non-Solar REC is concern as stated in para 24 and hence request Hon'ble Commission, on going forward, to allow the

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Petitioner to procure Solar REC in lieu of Non Solar REC considering that the prices of Solar and Non-Solar REC are similar.

33. The Petitioner respectfully submits that Gujarat Electricity Regulatory Commission (Procurement of Energy from Renewable Sources) (Second Amendment) Regulations, 2018 has allowed procurement of power from either sources in case non-availability of power from other sources. Clause 4 of the said Regulation reads as under:-

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

If the 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."

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

PRAYERS

34. In the aforementioned facts and circumstances, the Petitioner most humbly respectfully prays that:
- (a) that this Hon'ble Commission be pleased to pass appropriate directions that REC purchased by the Petitioner in the month of April, 2018, be considered for balance shortfall of RPO obligation for the FY 2017-18;
 - (b) that this Hon'ble Commission be pleased to allow Petitioner to roll over balance purchase of REC of the FY 2017-18 to FY 2018-19;
 - (c) that this Hon'ble Commission be pleased to allow the Petitioner to use Solar REC to meet its obligation for Non-Solar REC RPO and vice-versa for FY 2018-19.

Ansdel

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

DECLARATION

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

Place: Ahmedabad
Date: 08/02/2019

Nisarg Desai
For Nanavati Associates
Advocates for Petitioner

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

PETITION NO. OF 2019

IN THE MATTER OF:

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

AND

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

AND

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

AND

IN THE MATTER OF:

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

... Petitioner

AFFIDAVIT VERIFYING THE PETITION

1. I, Ashish Shah, S/o Balchandra Shah, Adult, residing at Ahmedabad, do solemnly affirm and say as follows:

2. I am a General Manager of Reliance Industries Ltd., the Petitioner company herein and I have read the petition pertaining to the above case

Ashish

and I am competent and duly authorized by the Petitioner company to make this Affidavit.

Solemnly affirmed at Ahmedabad on 4th day of February, 2019, that the contents of the above affidavit are true to my knowledge, no part of it is false and nothing material has been concealed therefrom.

Place: Ahmedabad

Date: 3.02.2019

Ashish B. Shah
Deponent

Identified by me
[Signature]

Nisarg Desai
For Nanavati Associate
Advocates for the Petitioner

SR. NO. 1269 2019
SOLEMNLY AFFIRMED
BEFORE ME
[Signature]
N. M. PATEL NOTARY
DATE. 4.2.19



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

- i. These Regulations shall be called the Gujarat Electricity Regulatory Commission (Procurement of Energy from Renewable Sources) Regulations, 2010.
- ii. These Regulations extend to the whole of the State of Gujarat.
- iii. These Regulations, excluding clause 8 shall come into force on the date of their publication in the Gazette.
- iv. 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 -

- (a) 'Act' means the Electricity Act, 2003 (Act 36 of 2003);
- (b) 'Area of Supply' means the area within which a distribution licensee is authorized to supply electricity;
- (c) '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 non-conventional, renewable electricity generating sources such as mini/ micro hydel, wind, solar, biomass and bagasse based co-generation, 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



- a) 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.
- b) 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.
- c) 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.
- d) 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 and 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.

Sd/-

Place: Ahmedabad
Date: 17 April 2010

(Sanjay Nandan Agrawal)
SECRETARY
Gujarat Electricity Regulatory Commission





सत्यमेव जयते

The Gujarat Government Gazette

EXTRAORDINARY

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WEDNESDAY, JULY 1, 2015/ASADHA 10, 1937

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

Gandhinagar.

NOTIFICATION No. 2 of 2015

In exercise of the powers conferred under sections 61, 86(1)(e) and 181 of the Electricity Act, 2003 read with sub-regulation (iv) of Regulation 1 and Regulation 8 of the Gujarat Electricity Regulatory Commission (Procurement of Energy from Renewable Sources) Regulations, 2010 (Notification No.3 of 2010) (Principal Regulations) and Gujarat Electricity Regulatory Commission (Procurement of Energy from Renewable Sources) (First Amendment) Regulations, 2014 (Notification No. 2 of 2014), and all other powers enabling it in this behalf, the Gujarat Electricity Regulatory Commission hereby notifies the 1st day of July, 2015, as the date on which the sub-regulation (iv) of Regulations 1 and Regulation 8 of Gujarat Electricity Regulatory Commission (Procurement of Energy from Renewable Sources) Regulations, 2010 (Notification No.3 of 2010) and amendments made in it shall come into force and the Renewable Purchase Obligation shall become applicable to Captive and Open Access User(s)/Consumer(s).

Place : Gandhinagar.

Date : 1/07/2015.

S. T. ANADA

I/C Secretary

Gujarat Electricity Regulatory Commission

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

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:

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 RPO 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 '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, "..... 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.". 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:

"[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-petitioners, 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 'NAPC'] 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

are situated in the license area of supply of any distribution licensee. Hence, it is incorrect to say that the electricity generated from CGP consumed by its owner is not part of the total consumption. The person who consumes the electricity generated from fossil fuel based (conventional source of energy) Captive Generating Plant is also required to include in its total consumption of electricity generated from renewable sources as specified by the Commission. If such person is not consuming the electricity from renewable sources based generation, he is required to purchase renewable energy and consume the same. Thus, the person who consumes electricity shall have to purchase renewable energy if he is not fulfilling the Renewable Purchase Obligation notified by the State Electricity Regulatory Commission for fulfillment of RPO. A Division Bench of the Rajasthan High Court has, in its judgment dated 31.8.2012 in D.B. Civil Writ Petition No.2772/2012 and others, on pages 58, 59, and 60, also held that the renewable purchase obligation is applicable to captive consumers who consume electricity from conventional source based generation.

[IV] Tariff determination has no relevance to the applicability of renewable purchase obligation.

Part VII of the Electricity Act, 2003, which consists of Sections 61 to 65, deals with Tariff Regulations, determination of tariff, public notice for tariff and subsidy, if any, desired to be given by the Government. The various sections of the above Act describe the functioning of the Commission to carry out tariff determination. Section 86 falls under Part X of the Electricity Act, 2003 which pertains to State Regulatory Commissions. Sections 86(1)(a) to 86(1)(k) specify different and distinct functions from each other and are required to be complied with by the Commission in its entirety.

[V] On the issue as to whether the Renewable Purchase Obligation applies to purchase of energy or consumption of energy.

Sections 86(1)(e) specifically provides that the renewable purchase obligation is applicable to consumption of electricity. The electricity generated by the Captive Generating Plants is ultimately consumed by the owner of such plant and thus falls within the ambit of consumption, self or from the grid. The person who consumes the electricity generated from fossil fuel based (conventional source of energy) Captive Generating Plant is also required to include in its total consumption of electricity generated from renewable sources as specified by the Commission. If such person consumes the

electricity generated from renewable sources of energy from its own captive generating plant, it is not required to purchase renewable energy. However, if such person is not consuming the electricity from renewable sources based generation, he is required to purchase renewable energy and consume the same. Thus, the person who consumes electricity shall have to purchase renewable energy if he is not fulfilling the Renewable Purchase Obligation notified by the State Electricity Regulatory Commission for fulfillment of RPO.

[VI] While opposing contention that co-generation is at par with the renewable electricity generation, it is submitted that as per definition under section 2(12) of 'co-generation', the words 'process, 'produces' and 'two or more forms of useful energy' are very important to decide what is co-generation and whether the same is equated with the renewable source of energy or not. The word 'process' which is included in the aforesaid definition refers to be methodology/production of electricity by utilizing the input energy from any source and the same is converted to other forms of energy by utilization of various plant and machinery. Co-generation and National generation are the processes in which the source i.e. input or source could be conventional viz. coal, oil, gas or non-conventional viz. wind, solar, bagasse,

the input is processed and output in the form of electricity is obtained. Thus, co-generation is a method which gives two or more output (produced) of useful energy. The process for co-generation can utilize any of the sources viz. conventional energy source (fossil fuel), i.e. coal, oil and gas, or non-conventional energy source (renewable energy source) i.e. wind, solar, mini and micro hydro power plant, biomass, bagasse, and municipal solid waste. When the input energy source is coal, oil or gas, the electricity generated from it is called the electricity generated from conventional sources. Similarly, the electricity generated from non-conventional energy sources is called electricity generated from non-conventional sources. The process which is carried out to convert input energy source which is in fuel form to electricity and some other form of energy simultaneously is called co-generation. The energy source which is input to co-generation is important to decide whether the same is qualifying for promotion under Section 86(1)(e) of the Act. As mentioned earlier, the term 'co-generation' is defined in section 2(12) as 'a process which simultaneously produces two or more forms of useful energy (including electricity)'. The definition of co-generation is silent about the source, i.e input relevant for receiving the two outputs which is the end result. However, as per section 2 of the Electricity Act, 2003 which contains all

definitions, the definitions given are qualified by the express 'in this Act, unless the context otherwise required'. In other words, the definition given in section 2 of the Act is to be interpreted in the context of the relevant provision of the section where the term is used. Hence, even though section 2(12) does not indicate the source, in the context of Section 86(1)(e) of the Act, the term 'co-generation' shall have the meaning of the process which simultaneously produces two or more form of useful energy (including electricity) only from renewable sources. Thus, the source which is renewable stated in Section 86(1)(e) of the Act is important and linked with both co-generation and generation from renewable sources only, and being important from environmental point of view.

[VII] Inter alia, learned Senior counsel referred to provisions of National Electricity Policy and Tariff Policy notified under Section 3 of the Electricity Act, 2003 also emphasize promotion of energy from renewable/non-conventional based generation.

Clause 5.12.1 and 5.12.2 of the Tariff Policy provide for promotion of non-conventional sources of energy based generation. Clause 5.12.1 and particularly clause 5.12.2 categorically bring out that the intent of Section 86(1)(e) of the Act contemplates promotion of both generation

and co-generation only from non-conventional and renewable sources of energy. Clause 5.12.3 when read in conjunction with the two earlier clauses makes it clear that the co-generation being discussed in the subject of promotion is for co-generation in the Sugar Industry (bagasse) which would indicate that even the co-generation mentioned in Section 86(1)(e) of the Act is meant to be from renewable source. Clause 6.4(1) of the Tariff Policy also envisages promotion of non-conventional sources of energy generation including co-generation.

12.1 A reference is made to Availability of the renewable energy sources in the State by the learned Counsel that Renewable Purchase Obligation has to be decided with consideration of the renewable sources available in the State. According to the Annual Report FY 2012-2013 of the Ministry of New and Renewable Energy, the potential of the wind power in the State of Gujarat is 10609 MW, out of which only 3093 MW of wind generators have been installed so far. The potential of Biomass available in the State of Gujarat is 1221 MW and installed capacity is 31.2 MW as per the details available from the Gujarat Energy Development Agency. The potential of Bagasse available in the State of Gujarat is 350 MW. TERI estimated, the potential of Solar Power Generation in Gujarat is more than 10,000 MW, against which the capacity of Solar Power Projects so far commissioned is only 872.5 MW. Thus, sufficient potential of renewable energy

generation is available in the State to meet the Renewable Purchase Obligation by the obligated party. Moreover, the GERC has recognized renewable energy certificate as a valid instrument for fulfillment of Renewable Purchase Obligation by the obligated entities. The National Action Plan on Climate Change of the Government of India also stipulated that the State Electricity Regulatory Commission shall fix minimum renewable purchase standards at 5% for the year 2010-2011, to be increased by 1% each year for 10 years.

12.2 As regards the order of the Appellate Tribunal in the case of Century Rayon, dated 26.4.2010, it is submitted that the said order is not applicable to a CPP who is not co-generating plant. Moreover, the order of the Appellate Tribunal dated 26.4.2010 was pronounced after the impugned order dated 17.4.2010.

12.3 The following judgments are relied upon on behalf of the respondent:

[i] Tata Power Company Limited vs. Reliance Energy Limited and others, reported in (2009) 16 Supreme Court Cases 659

[ii] Ambuja Cements Limited vs. Rajasthan Electricity Regulatory Commission, by judgment and order dated 31.8.2012, a Division Bench consisting of Hon'ble the Chief Justice Mr. Arun

Mishra [as His Lordship then was] and Hon'ble Mr Justice Narendra Kumar Jain of the High Court of Judicature for Rajasthan at Jaipur, Bench Jaipur.

13 In rejoinder, it is submitted on behalf of the petitioners, while denying the averments made in the affidavit-in-reply, that, irrespective of any such alleged Action Plan, policies or formulations, the impugned Regulations need to be consistent with the Constitution, the Act and the Rules. A plain reading of Section 9 of the Act excludes CPPs from the Regulatory Control of the respondent except to the extent of the proviso thereto, and they are not covered under Section 86 of the Act. Paragraph 6.4 of the National Tariff policy contemplates procurement of power from the renewable energy sources by Distribution Companies. The said policy does not contemplate procurement of power by captive power plants. That, CPPs are not Distribution Companies as defined under the Act and paragraph 6.4 squarely excludes applicability of the provisions of national Tariff Policy to the CPPs. Similarly, Paragraph 3 of para 5.12 of the National Electricity Policy contemplates promotion of arrangements between the co-generator and the concerned distribution licensee for purchase of surplus power from plants having co-generation process and para 5.12 does not contemplate purchase of power from the Renewable Energy Sources by the CPPs. It is reiterated that RECs is impractical and unworkable. That, RECs cannot be a substitute for the power requirement of the CPPs.

13.1 It is submitted that under clause 2(2), co-generation is included in the definition of Renewable Energy in Notification dated 23.03.2007 issued by Rajasthan Electricity Regulatory Commission and further clause 3(p) about purchase / sale of renewable energy also included co-generation distinguishing and segregating purchase / sale of 'electricity component' RE sources including co-generation. Therefore, law laid down in the case of Ambuja Cement [supra] will not be applicable.

14 In order to adjudicate the issues involved in these petitions, it is necessary to advert to the Statement of Objects and Reasons of the Electricity Act, 2003 and other relevant provisions, which read as under:

"Statement of Objects and Reasons

The Electricity Supply Industry in India is presently governed by three enactments, namely, the Indian Electricity Act, 1901, the Electricity (Supply) Act, 1948, the Electricity Regulatory Commissions Act, 1998.

1.1 xxx

1.2 xxx

1.3 xxx

2. xxx

3. With the policy of encouraging private sector participation in generation, transmission and distribution and the objective of distancing the regulatory responsibilities from the Government to the Regulatory Commissions, the need for harmonising and rationalising the provisions in the Indian Electricity Act, 1901, the Electricity (Supply) Act, 1948, and the Electricity Regulatory Commissions Act, 1998, in a new self-contained comprehensive legislation arose. Accordingly, it became necessary to enact a new legislation for regulating the electricity supply industry in the country which would replace the existing laws, preserve its core features other than those relating to the mandatory existence of the State Electricity Board and the responsibilities of the State Government and the State Electricity Board with respect to regulating licensees. There is also need to provide for newer concepts like power trading and open access. There is also need to obviate the requirement of each State Government to pass its own Reforms Act. The Bill has progressive features and endeavours to strike the right balance given the current realities of the power sector in India. It gives the State enough flexibility to develop their power sector in the manner they consider appropriate. The Electricity Bill, 2001 has been finalised after extensive discussions and consultations with the States and all other stake holders and experts.

4. The main features of the Bill are as follows:-

[i] Generation is being delicensed and captive generation is being freely permitted. Hydro projects would, however, need approval of the State Government and clearance from the Central Electricity Authority which would go into the issues of dam safety and optimal utilisation of water resources.

[ii] There would be a Transmission Utility at the Central as well as State level, which would be a Government company and have the responsibility of ensuring that the transmission network is developed in a planned and coordinated manner to meet the requirements of the sector. The load dispatch function could be kept with the Transmission Utility or separated. In the case of separation the load despatch function would have to remain with a State Government organisation/company.

[iii] There is provision for private transmission licensees.

[iv] There would be open access in transmission from the outset with provision for surcharge for taking care of current level of cross subsidy with the surcharge being gradually phased out.

[v] Distribution licensees would be free to undertake generation and generating companies would be free to take up distribution licensees.

[vi] The State Electricity Regulatory

Commissions may permit open access in distribution in phases with surcharge for -

[a] current level of cross subsidy to be gradually phased out along with cross subsidies; and

[b] obligation to supply.

[vii] For rural and remote areas stand alone systems for generation and distribution would be permitted.

[viii] For rural areas decentralised management of distribution through Panchayats, Users Associations, Cooperatives or Franchisees would be permitted.

[ix] Trading as a distinct activity is being recognized with the safeguard of the Regulatory Commissions being authorized to fix ceilings on trading margins, if necessary.

[x] Where there is direct commercial relationship between a consumer and a generating company or a trader the price of power would not be regulated and only the transmission and wheeling charges with surcharge would be regulated.

[xi] There is provision for a transfer scheme by which company/companies can be created by the State Government from the State Electricity Boards. The State Governments have the option of continuing

with the State Electricity boards which under the new scheme of things would be a distribution licensee and the State Transmission Utility which would also be owning generation assets. The service conditions of the employees would as a result of restructuring not be inferior.

(xii) An Appellate Tribunal has been created for disposal of appeals against the decision of the CERC and State Electricity Regulatory Commissions so that there is speedy disposal of such matters. The State Electricity Regulatory Commission is a mandatory requirement.

[xiii] Provisions relating to theft of electricity have a revenue focus.

5 xx xx

6. xx xx

Preamble

"An Act to consolidate the laws relating to generation, transmission, distribution, trading and use of electricity and generally for taking measures conducive to development of electricity industry, promoting competition therein, protecting interest of consumers and supply of electricity to all areas, rationalisation of electricity tariff, ensuring transparent policies regarding subsidies, promotion of efficient and environmentally benign policies, constitution of Central Electricity Authority, Regulatory Commissions and establishment of Appellate Tribunal and for matters connected there

with or incidental thereto.

2. **Definitions**:- In this Act, unless the context otherwise requires-

[3] 'area of supply' means the area within which a distribution licensee is authorised by his licence to supply electricity.

[4] 'Appropriate Commission' means the Central Regulatory Commission referred to in sub-section (1) of section 76 or the State Regulatory Commission referred to in section 82 or the Joint Commission referred to in section 83, as the case may be.

[8] 'Captive generating plant' means a power plant set up by any person to generate electricity primarily for his own use and includes a power plant set up by any co-operative society or association of persons for generating electricity primarily for use of members of such co-operative society or association;

[12] 'Cogeneration' means a process which simultaneously produces two or more forms of useful energy (including electricity);

[13] 'company' means a company formed and registered under the Companies Act, 1956 (1 of 1956) and includes any body corporate under a Central, State or Provincial Act.

[14] 'consumer' means any persons who is

supplied with electricity for his own use by a licensee or the Government or by any other person engaged in the business of supplying electricity to the public under this Act or any other law for the time being in force and includes any person whose premises are for the time being connected for the purpose of receiving electricity with the works of a licensee, the Government or such other persons, as the case may be;

[17] `distribution licensee' means a licensee authorised to operate and maintain a distribution system for supplying electricity to the consumers in his area of supply;

[23] "electricity" means electrical energy-

[a] generated, transmitted, supplied or traded for any purpose; or

[b] used for any purpose except the transmission of a message;

[29] "generate" means to produce electricity from a generating station for the purpose of giving supply to any premises or enabling a supply to be so given;

[32] "grid" means the high volt age backbone system of inter-connected transmission lines, sub-station and generating plants;

[46] "notification" means notification

published in the Official Gazette and the expression "notify" shall be construed accordingly;

[47] "open access" means the non-discriminatory provision for the use of transmission lines or distribution system or associated facilities with such lines or system by any licensee or consumer or a person engaged in generation in accordance with the regulations specified by the Appropriate Commission;

[49] "person" shall include any company or body corporate or association or body of individuals, whether incorporated or not, or artificial juridical person;

[52] "prescribed" means prescribed by rules made by the Appropriate Government under this Act;

[57] "regulations" means regulations made under this Act;

[62] "specified" means specified by regulations made by the Appropriate Commission or the Authority, as the case may be, under this Act;

[63] "stand alone system" means the electricity system set-up to generate power and distribute electricity in a specified area without connection to the grid;

[64] "State Commission" means the State Electricity Regulatory Commission constituted under

sub-section (1) of section 82 and includes a Joint Commission constituted under sub-section (1) of section 83;

[70] "supply", in relation to electricity, means the sale of electricity to a licensee or consumer;

Part II Section 3 of Act, 2003

National Electricity Policy and Plan

3. xx xx

4. The Central Government shall, after consultation with the State Governments, prepare and notify a national policy, permitting stand alone systems (including those based on renewable sources of energy and non-conventional sources of energy) for rural areas.

Part III Generation of Electricity

7. Generating company and requirement for setting up of generating station.

8. Hydro-electric generation.

9. **Captive Generation.**

[1] Notwithstanding anything contained in this Act, a person may construct, maintain or operate a captive generating plant and dedicated transmission

lines:

Provided that the supply of electricity from the captive generating plant through the grid shall be regulated in the same manner as the generating station of a generating company.

Provided further that no licence shall be required under this Act for supply of electricity generated from a captive generating plant to any licensee in accordance with the provisions of this Act and the rules and regulations made thereunder and to any consumer subject to the regulations made under subsection (2) of section 42.

[2] Every person, who has constructed a captive generating plant and maintains and operates such plant, shall have the right to open access for the purposes of carrying electricity from his captive generating plant to the destination of his use:

Provided that such open access shall be subject to availability of adequate transmission facility and such availability of transmission facility shall be determined by the Central Transmission Utility or the State Transmission Utility, as the case may be:

Provided further that any dispute regarding the availability of transmission facility shall be adjudicated upon by the Appropriate Commission.

11. Directions to generating companies:-

[1] The Appropriate Government may specify that a generating company shall, in extraordinary

circumstances, operate and maintain any generating station in accordance with the directions of that Government.

Part VII Tariff

61. The Appropriate Commission shall, subject to the provisions of this Act, specify the terms and conditions for the determination of tariff, and in doing so, shall be guided by the following, namely:-

[a] the principles and methodologies specified by the Central Commission for determination of the tariff applicable to generating companies and transmission licensees;

[b] the generation, transmission, distribution and supply of electricity are conducted on commercial principles;

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

[d] safeguarding of consumers' interest and at the same time, recovery of the cost of electricity in a reasonable manner;

[e] the principles rewarding efficiency in performance;

[f] multi year tariff principles;

[g] that the tariff progressively reflects the cost of supply of electricity and also, reduces and eliminates cross-subsidies within the period to be specified by the Appropriate Commission;

[h] the promotion of co-generation and generation of electricity from renewable sources of energy;

[i] the National Electricity Policy and tariff policy:

Provided that the terms and conditions for determination of tariff under the Electricity (Supply) Act, 1948, the Electricity Regulatory Commission Act, 1998 and the enactments specified in the Schedule as they stood immediately before the appointed date, shall continue to apply for a period of one year or until the terms and conditions for tariff are specified under this section, whichever is earlier.

62. Determination of tariff;- (1) The Appropriate Commission shall determine the tariff in accordance with provisions of this Act for -

[a] supply of electricity by a generating company to a distribution licensee: Provided that the Appropriate Commission may, in case of shortage of supply of electricity, fix the

minimum and maximum ceiling of tariff for sale or purchase of electricity in pursuance of an agreement, entered into between a generating company and a licensee or between licensees, for a period not exceeding one year to ensure reasonable prices of electricity;

[b] transmission of electricity ;

[c] wheeling of electricity;

[d] retail sale of electricity.

Provided that in case of distribution of electricity in the same area by two or more distribution licensees, the Appropriate Commission may, for promoting competition among distribution licensees, fix only maximum ceiling of tariff for retail sale of electricity.

Provided that in case of distribution of electricity in the same area by two or more distribution licensees, the Appropriate Commission may, for promoting competition among distribution licensees, fix only maximum ceiling of tariff for retail sale of electricity.

86. Functions of State Commission;- [1] The State Commission shall discharge the following functions, namely:

[a] determine the tariff for generation, supply, transmission and wheeling of electricity, wholesale, bulk or retail, as the case may be, within the State: Providing that where open access has been permitted to a category of consumers under section 42, the State Commission shall determine only the wheeling charges and surcharge thereon, if any, for the said category of consumers;

[b] regulate electricity purchase and procurement process of distribution licensees including the price at which electricity shall be procured from the generating companies or licensees or from other sources through 46 agreements for purchase of power for distribution and supply within the State;

[c] facilitate intra-state transmission and wheeling of electricity;

[d] issue licences to persons seeking to act as transmission licensees, distribution licensees and electricity traders with respect to their operations within the State;

[e] promote co-generation and generation of electricity from renewable sources of energy by providing suitable measures for connectivity with the grid and sale of electricity to any person, and also specify, for purchase of electricity from such sources, a percentage of the total consumption of electricity in the area

of a distribution licence;

[f] adjudicate upon the disputes between the licensees, and generating companies and to refer any dispute for arbitration;

[g] levy fee for the purposes of this Act;

[h] specify State Grid Code consistent with the Grid Code specified under clause (h) of sub-section (1) of section 79;

[i] specify or enforce standards with respect to quality, continuity and reliability of service by licensees;

[j] fix the trading margin in the intra-State trading of electricity, if considered, necessary; and

[k] discharge such other functions as may be assigned to it under this Act.

[2] The State Commission shall advise the State Government on all or any of the following matters, namely :-

[i] promotion of competition, efficiency and economy in activities of the electricity industry;

[ii] promotion of investment in electricity industry;

[iii] reorganization and restructuring of electricity industry in the State;

[iv] matters concerning generation, transmission, distribution and trading of electricity or any other matter referred to the State Commission by that Government.

[3] The State Commission shall ensure transparency while exercising its powers and discharging its functions.

[4] In discharge of its functions the State Commission shall be guided by the National Electricity Policy, National Electricity Plan and tariff policy published under section 3."

181. Powers of State Commissions to make regulations—

[1] the State Commissions may, by notification, make regulations consistent with this Act and the rules generally to carry out the provisions of this Act.

[2] In particularly and without prejudice to the generality of the power contained in sub-section (1), such regulations may provide for all or any of the following matters, namely.....:-

National Action Plan on Climate Change

4.2.2 Grid Connection Systems

The Electricity Act and the National Tariff Policy,

2006 provide for both the Central Electricity Regulatory Commission (CERC) and the State Electricity Regulatory Commissions (SERC) to prescribe a certain percentage of total power purchased by the grid from renewable based sources. It also prescribes that a preferential tariff may be followed for renewable based power.

The following enhancements in the regulatory/tariff regime may be considered to help mainstream renewables based sources in the national power system:

[i] A dynamic minimum renewable purchase standard (DMRPS) may be set, with escalation each year till a pre-defined level is reached, at which time the requirements may be revisited. It is suggested that starting 2009-10, the national renewables standard excluding hydropower with storage capacity in excess of daily peaking capacity, or based on agriculture based renewables sources that are used for human food may be set at 5% of total grids purchase, to increase by 1% each year for 10 years. SERCs may set higher percentages than this minimum at each point in time.

[ii] Central and state governments may set up a verification mechanism to ensure that renewables based power is actually procured as per the applicable standard (DMRPS or SERC specified). Appropriate authorities may also issue certificates that procure renewables based power in excess of the national standard. Such certificates may be

tradeable, to enable utilities falling short to meet their renewable standard obligations. In the event of some utilities still falling short, penalties as may be allowed under the Electricity Act 2003 and rules thereunder may be considered.

[iii] Procurement of renewables based power by the SEBs/other power utilities should, in so far as the applicable renewable standard (DMRPS or SERC specified) is concerned, be based on competitive bidding, without regard to scheduling, or the tariffs of conventional power (however determined). Further, renewables based power may, over and above, the applicable renewables standard, be enabled to compete with conventional generation on equal basis (whether bid tariffs or cost-plus tariffs), without regard to scheduling (i.e. renewables based power supply above the renewables standard should be considered as displacing the marginal conventional peaking capacity). All else being equal, in such cases, the renewables based power should be preferred to the competing conventional power.

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.

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."

5.12 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 non-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.

Tariff Policy

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.

15 At the outset, scope and analysis of the Electricity Act, 2003 was considered by the Apex Court in the case of Tata Power Company Limited vs. Reliance Energy Limited and others, reported in (2009) 16 Supreme Court Cases 659. The Apex Court held that the Act, as a result of poor performance of State Electricity Boards, was enacted with a view to encourage participation of private sector and lays down policies for generation, transmission and distribution of electricity. The Central Government intended to have an independent body for determination of tariff in a professional manner and for this reason the Act provided for establishment of Electricity Regulatory Commission. The Apex Court has also outlined the salient features of the Act viz. (i) delicensing of power generation, (ii) general permission for captive generation, (iii) only concurrence is required in case of hydro-electric generation, (iv) open access in transmission, (v) separation of power generation from transmission and distribution, and (vi) trading in electricity subject to obtaining of licence, and, thus, the Act provides for measures which are conducive to development of electricity industry, generation of power and promotion of competition. The Apex Court envisaged a kind of problem for generating companies from

licensing regime and, this being the primary object of the Act, while interpreting any of the provisions of the Act, the avowed objects are to be kept in mind. While holding that the activities of the generating companies are beyond the purview of the licensing provisions, the Apex court followed the principle of purposive construction.

16 In a batch of Civil Writ Petition No. 2772 of 2012 and others, in the case of Ambuja Cements Limited vs. Rajasthan Electricity Regulatory Commission, by judgment and order dated 31.8.2012, a Division Bench consisting of Hon'ble the Chief Justice Mr. Arun Mishra [as His Lordship then was] and Hon'ble Mr Justice Narendra Kumar Jain of the High Court of Judicature for Rajasthan at Jaipur, Bench Jaipur, upon a challenge to the Regulations framed, namely, Regulations 4 and 5 pertaining to renewable energy obligation and payment of surcharge for shortfall obligation by notification dated 23.3.2007 issued by the Rajasthan Electricity Regulatory Commission in exercise of power under Section 86(1)(e) read with Section 181 of the Electricity Act, 2003, imposing obligation on the captive power plants and open access consumers to purchase minimum energy from renewable sources and to pay surcharge in case of short-fall in meeting out the RE obligation, be declared ultra vires Sections 7, 9, 86(1)(a) and (e) and 181 of the Act of 2003, Articles 14, 19(1)(g) of the Constitution of India, National Electricity Policy, 2005 and Tariff Policy 2006, inter-alia, contending that the

Regulatory Commission had no authority to issue notification to non-licensee like the petitioners in these petitions, namely, CPP or CGP and, upon consideration of similar contentions raised hereinabove in all these petitions and considering various provisions of the Electricity Act, 2003, Rules and Regulations framed thereunder, held as under:

“In the light of the aforesaid provisions, it is apparent that thrust of the Act of 2003, provisions contained in the National Electricity Policy, 2005 and the Tariff Policy, 2006 is to ensure that there is no licensing of captive power generation of energy and generating company may establish, operate and maintain generating station without obtaining a license under the Act of 2003; at the same time, there is need to promote co-generation and generation of electricity from non-conventional sources; it is provided in Para 6.4 of Tariff Policy, Para 5.12.2 of the National Electricity Policy and Section 86(1)(e) of the Act of 2003 that the Regulatory Commission shall fix 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; non-conventional technologies cannot compete with conventional sources in terms of cost of electricity, as such, Regulatory Commission has power to determine the preferential tariffs.

The submission raised by the petitioners is that under section 7 of the Act of 2003, the generating company can establish, operate and

maintain generating station including captive power plant without obtaining a license; section 9 contains non-obstante clause; licensing is contemplated only to transmit electricity, distribute electricity or undertake trading in electricity as provided under section 12 and license can be granted under section 14 for the aforesaid purposes and thus, licensees stand on different footing and the industries like petitioners having independent captive power plants cannot be treated alike licensees as they are not required to obtain license for setting up captive power plants and they have to be given free play and cannot be obligated to purchase energy from renewable sources; for regulation of supply, distribution, consumption or use of electricity, directions are contemplated to the licensee alone under section 23 of the Act of 2003 and no directions could have been given by the Regulatory Commission to the petitioners having captive power plants to purchase energy from renewable source as they are not licensees; they could not be treated alike licensees and thus, imposition of RE obligation through impugned Regulations cannot be sustained.

In our opinion, obligations upon licensee are different and merely by the fact that no license is required to be obtained by the petitioners for establishing, operating and maintaining captive power plant by virtue of Sections 7 and 9 of the Act of 2003, it cannot be inferred that the petitioners involved in the manufacture of various industrial

activities such as cement, textile, chemical, clinker, guwar gum powder, rayons, white cement, copper, tyre, tube, flaps, fertilizers, agri.-inputs, non-ferrous metals, lead, zinc etc., cannot be fastened with the obligation to purchase energy from renewable sources as provided in the Regulations of 2007 and 2010. The provisions made with respect to obligations and liabilities for licensee cannot come in the way to carry out the objectives of the Act of 2003, National Electricity Policy and Tariff Policy. Under section 86(1)(e) the Regulatory Commission has to discharge the function for promoting co-generation and generation of energy from renewable sources. Section 53(e) provides that the Authority may, in consultation with the State Government, specify suitable measures for keeping by a generating company or licensee the maps, plans and sections relating to supply or transmission of electricity. Section 60, which deals with market domination, empowers the Regulatory Commission to issue directions as it considers appropriate to a licensee or a generating company if such licensee or generating company enters into any agreement or abuses its dominant position or enters into a combination which is likely to cause or causes an adverse effect on competition in electricity industry. Thus, generating company is not totally free from the control of the Regulatory Commission, as submitted by the petitioners.

When we come to the provisions contained in Section 86(1) (e) and 181 of the Act of 2003 under which the impugned Regulations have been

framed, the Regulatory Commission has to discharge functions for promoting cogeneration and generation of electricity from renewable sources of energy and for this purpose, the Regulatory Commission has power to provide suitable measures for connectivity with the grid and sale of electricity to any person and also specify for purchase of electricity from such sources, a percentage of the total consumption of electricity in the area of a distribution licensee. Thus, it is apparent that under Section 86(1)(e) of the Act of 2003, the Regulatory Commission has power to direct the petitioners running captive power plants to purchase energy from renewable sources considering the percentage of the total consumption of electricity in the area of distribution licensee. **The word 'total consumption' has been used by the legislature in Section 86(1)(e) and total consumption in an area of a distribution licensee can be by three ways either supply through distribution licensee or supply from captive power plants by using lines and transmission lines of distribution licensee or from any other source by using transmission lines of distribution licensee. The area would always be of distribution licensee, as the transmission lines and the system is of distribution licensee, the total consumption is very significant. The total consumption has to be seen by consumers of distribution licensee, captive power plants and on supply through distribution licensee. It cannot be inferred by mention of area of distribution licensee that only consumers of the distribution licensee are included. The total consumption has the reference to the various modes of**

consumption which are possible in the area of distribution licensee. In case the submission of the petitioners is accepted, in that event, the consumers of the distribution licensee would only be saddled with the liability of renewable energy obligation, that would be discriminatory when consumption is through captive power plant or open access. The total consumption in the area of distribution licensee would be total consumption in all modes otherwise anomalous results would occur.

The objective behind imposition of RE obligation upon captive power plants and open access consumers is to promote generation of electricity from renewable sources; it would have long lasting impact in protecting environment; as per CEAs annual report of 2003, the installed capacity is 107973 MW in the country; the break up is hydro power generation- 26910 MW (24.9%), thermal power generation 76607 MW (71%) nuclear power generation 2720 MW (2.5%) and wind power generation 1736 MW (1.6%), out of thermal power generation coal comprises 63801 MW, gas- 11633 MW and diesel 1173 MW representing 59.1% and 10.8% and 1.1% of the total installed capacity respectively; thus, the coal is dominating the scenario and will continue to do so in future also,; the thermal generation causes generation of green house gases (GHG) namely, carbon dioxide CO₂, sulphur dioxide, nitrogen oxide and solid particulate matter which beyond a specific limit are hazardous for health; global warming is affected by increased emission of green house gases resulting into fundamental changes in approach

towards development of energy sector in all the countries; objective behind imposition of RE obligation is in the greater public interest which would have long impact on protection of environment; there is need of the hour to protect environment; it is in ecology to boost interest of the production by utilizing renewable sources of energy; Regulatory Commission has solemn obligation to protect and improve the present and future environment generation; Article 51-A(g) of the Constitution casts duty on the citizen to protect and improve the natural environment; considering the global warming, mandate of Article 21 and 51-A(g) of the Constitution, provisions of the Act of 2003, National Electricity Policy and Tariff Policy, the action has been taken by the Regulatory Commission imposing obligation upon captive power plant and open access consumers also to purchase electricity from renewable sources and the same is in public interest as energy generated from renewable sources is pollution free. There are no purchasers of the energy generated by renewable sources; they cannot compete in the market as such production is costly; the Regulatory Commission has been conferred with the power to impose obligation on captive power plants and open access consumers also to purchase energy from renewable sources in order to protect ecology from environmental degradation; merely because petitioners are having independent captive power plants and they are not licensees, still they can be asked to promote and purchase energy from renewable sources and we find that the RE obligation imposed upon captive power plants and open access

consumers through impugned Regulations cannot in any manner be said to be restrictive of any of the rights conferred on the petitioners under Article 19(1)(g) of the Constitution nor the obligation can be said to be violative of Article 14 of the Constitution.

In *Krishnan Kakkanth V/s Government of Kerala and ors.* (AIR 1997 SC 128), the Apex Court held that fundamental rights guaranteed under Article 19 are not absolute but the same are subject to reasonable restrictions to be imposed against enjoyment of such rights. The reasonableness of restriction is to be determined in an objective manner and from the stand point of the interests of general public and not from the stand point of the interests of the persons upon whom the restrictions are imposed or upon abstract consideration. A restriction cannot be said to be unreasonable merely because in a given case, it operates harshly and even if the persons affected be petty traders. In determining the infringement of the right guaranteed under Article 19(1), the nature of right alleged to have been infringed, the underlying purpose of the restriction imposed, the extent and urgency of the evil sought to be remedied thereby, the disproportion of the imposition, the prevailing conditions at the time, enter into judicial verdict. Under clause (1)(g) of Article 19, every citizen has a freedom and rights to choose his own employment or take up any trade or calling subject only to the limits as may be imposed by the State in the interests of public welfare and the other grounds

mentioned in clause (6) of Article 19. But the Constitution does not recognize franchise or rights to business which are dependent on grants by the State or business affected by public interest. **In the present case, RE obligation on the captive power plant and open access consumers to purchase minimum energy from renewable sources and to pay surcharge in case of short fall in meeting out the RE obligation, has been imposed under the impugned Regulations and such RE obligation cannot in any manner be regarded as restrictive infringing rights of the petitioners under Article 19(1)(g) of the Constitution.**

Para 6.4 of the Tariff Policy also authorizes the Regulatory Commission to fix minimum percentage for purchase of energy from renewable sources taking into account the availability of such resources in the region; Tariff Policy also provides that non-conventional sources of energy generation including cogeneration cannot compete at present with conventional sources in terms of cost of electricity, therefore, preferential tariff can be determined by the Regulatory Commission. The provisions are not confined to the distribution companies only. **Para 5.12.1 of the National Electricity Policy** also provides that 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. **In our opinion, the RE obligation, which has been put on the petitioners running captive power plants, under the Regulations of 2007 and 2010 is in furtherance of the**

aforesaid objective; it is a promotional measure taken for growth of renewable energy by directing purchase of particular percentage of energy from renewable sources; at the same time, it is open to the industries like the petitioners to generate electricity through captive power plants to the maximum and no restriction has been put up on quantity of generation of electricity by the industries, only obligation is that they have to purchase certain percentage of energy from renewable sources considering total consumption.

Para 5.12.2 of the National Electricity Policy provides that under the Act of 2003, the Regulatory Commission would promote co-generation and generation of electricity from non-conventional sources 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. Thus, it is open to the Regulatory Commission to prescribe the percentage of the total consumption of electricity in the area of a distribution licensee and percentage of total consumption can be specified in the area of distribution licensee as per the National Electricity Policy, precisely it has been done under the impugned Regulations as the consumption from captive power plant is also consumption which has to be included in the total consumption in the area of distribution licensee.

As per Para 5.2.24 of the National

Electricity Policy relating to captive generation, the liberal provision in the Act of 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. Cost effectiveness is also one of the objectives of setting up of captive power plant under Para 5.2.24 and to utilize electricity generated by large number of captive and standby generating stations in India, they have surplus capacity that could be supplied to the grid continuously or during certain time periods. Thus, by imposing RE obligation upon captive power plants and open access consumers, it cannot be said that any of the objectives of the National Electricity Policy or Tariff Policy or Act of 2003 have been defeated; there is no embargo put under the impugned Regulations on their functioning; at the same time, promotion of energy from renewable sources has to be made so as to protect environment and global warming.

Section 86(1)(b) of the Act of 2003 has been relied upon by the petitioners which provides that the Regulatory Commission in discharge of the functions may regulate electricity purchase and procurement process of distribution licensees including the price at which electricity shall be procured from the generating companies or licensees or from other sources through agreements for purchase of power for distribution and supply within the State. In our opinion, as apparent from the very language of Section 86(1)(b), it deals with the

purchase and procurement process of distribution licensees and also deals with the prices at which electricity shall be procured from the generating companies and in case generating companies are having surplus, it is open for them to supply to the grid. The provisions of Section 86(1)(e) of the Act of 2003 provides independent functions and the provisions contained in Section 86(1)(b) cannot control and confine the operation of Section 86(1)(e) with respect to distribution licensee only; Section 86(1)(b) deals with power to regulate electricity purchase and procurement process of distribution licensees and the price at which electricity shall be procured from the generating companies or licensees, whereas Section 86(1)(e) deals with promotion of co-generation and generation of electricity from "renewable source" of energy by providing suitable measures which are specified in the said provisions and thus, section 86(1)(b) cannot control and confine operation of Section 86(1)(e) to distribution licensee alone, as suggested by the petitioners. We have no hesitation in rejecting the said submission of petitioners. On plain reading of the aforesaid provision, submission is not borne out.

Section 86(4) provides that in discharge of its functions, the Regulatory Commission shall be guided by the National Electricity Policy, National Electricity Plan and Tariff Policy published under section 3. We find no repugnancy in the impugned Regulations framed by the Regulatory Commission imposing RE obligation upon captive power plant and open access consumers to purchase energy from

renewable sources nor they can be regarded violative of National Electricity Policy, 2005 and Tariff Policy, 2006 published under section 3 of the Act of 2003 by the Central Government, rather impugned Regulations aim to fulfill the objectives of the said policies.

It was also submitted on behalf of the petitioners that Section 181(1) of the Act of 2003 gives only general power to the Regulatory Commission to frame Regulations consistent with the Act and the rules generally to carry out the provisions of the said Act and none of the matters contained in clauses (a) to (zp) of Section 181(2) provide for framing of the impugned Regulations in respect of captive power plant and open access consumers and thus, they submitted that framing of the impugned Regulations is beyond the rule making authority conferred upon the Regulatory Commission under section 181 of the Act of 2003. The submission is based upon misconstruction of provisions of Section 86(1)(e); as we have already rejected the submission that Section 86(1)(b) has to control the operation of Section 86(1)(e), the submission is baseless. Section 181(1) provides that the State Commission may by notification, make regulations consistent with the Act and the rules generally to carry out the provisions of the said Act and as per the interpretation of Section 86(1)(e) along with National Electricity Policy and Tariff Policy for promotion of renewable energy, we find that the power to frame impugned Regulations under sections 86(1)(e) and 181 of the Act of 2003 imposing RE obligation

upon captive power plant and open access consumers to purchase energy from renewable sources, has been rightly exercised by the Regulatory Commission and the impugned Regulations cannot in any manner be said to be beyond provisions contained in the Act of 2003 or National Electricity Policy or Tariff Policy; Section 86(1)(e) authorizes the Regulatory Commission to impose RE obligation upon the industries having independent captive power plants and open access consumers and thus, it cannot be said that the impugned Regulations imposing RE obligation on captive power plant and open access consumers are contrary to the object and purpose of the Act of 2003 or National Electricity Policy or Tariff Policy. The RE obligation put on the captive power plants and open access consumers to purchase minimum energy from renewable source and to pay surcharge in case of shortfall in meeting out the obligation through impugned Regulations are clearly sustainable in law.

In PTC India Ltd. V/s Central Electricity Regulatory Commission ((2010) 4 SCC 603), the Apex Court has considered the scope and analysis of the Act of 2003 and held that the Act of 2003 contemplates three kinds of delegated legislation. Firstly, under Section 176, the Central Government is empowered to make rules to carry out the provisions of the Act. Correspondingly, the State Governments are also given powers under Section 180 to make rules. Secondly, under Section 177, the Central Authority is also empowered to make regulations consistent with the Act and the rules to carry out the provisions of the Act. Thirdly, under

Section, 178 the Central Commission can make regulations consistent with the Act and the rules to carry out the provisions of the Act. SERCs have a corresponding power under Section 181. A holistic reading of the Act of 2003 leads to the conclusion that regulations can be made as long as two conditions are satisfied, namely, that they are consistent with the Act and that they are made for carrying out the provisions of the Act. The Apex Court rejected the contention that under the Act of 2003, the power to make regulations under section 178 has to be correlated to the functions ascribed to each authority under the Act of 2003 and that CERC can enact regulations only on topics enumerated in section 178(2). The Apex Court has further held that apart from section 178(1) which deals with "generality" even under section 178(2) (ze) CERC could enact a regulation on any topic which may not fall in the enumerated list provided such power falls within the scope of the Act of 2003. Trading is an activity recognized under the Act of 2003. The Apex Court has laid down thus:-

"28. The 2003 Act contemplates three kinds of delegated legislation. Firstly, under Section 176, the Central Government is empowered to make rules to carry out the provisions of the Act. Correspondingly, the State Governments are also given powers under Section 180 to make rules. Secondly, under Section 177, the Central Authority is also empowered to make regulations consistent with the Act and the rules to carry out the provisions of the Act. Thirdly, under

Section 178, the Central Commission can make regulations consistent with the Act and the rules to carry out the provisions of the Act. SERCs have a corresponding power under Section 181. The rules and regulations have to be placed before Parliament and the State Legislatures, as the case may be, under Section 179 and 182. The Parliament has the power to modify the rules/ regulations. This power is not conferred upon the State Legislatures. A holistic reading of the 2003 Act leads to the conclusion that regulations can be made as long as two conditions are satisfied, namely, that they are consistent with the Act and that they are made for carrying out the provisions of the Act.

65. The above two citations have been given by us only to demonstrate that under the 2003 Act, applying the test of "general application", a Regulation stands on a higher pedestal vis-à-vis an Order (decision) of CERC in the sense that an Order has to be in conformity with the regulations. However, that would not mean that a regulation is a pre-condition to the order (decision). therefore, we are not in agreement with the contention of the appellant(s) that under the 2003 Act, power to make regulations under Section 178 has to be correlated to the functions ascribed to each authority under the 2003 Act and that CERC can enact regulations only on topics enumerated in Section 178(2). In our view, apart from Section 178(1) which deals

with "generality" even under Section 178(2)(ze) CERC could enact a regulation on any topic which may not fall in the enumerated list provided such power falls within the scope of 2003 Act. Trading is an activity recognized under the said 2003 Act."

In the present case, the impugned Regulations framed by the Regulatory Commission imposing RE obligation on the captive power plant and open access consumers to purchase minimum energy from renewable sources and to pay surcharge in case of shortfall in meeting out the RE obligation, are consistent with the Act of 2003, National Electricity Policy and Tariff Policy and they are made for carrying out the provisions of the Act of 2003, National Electricity Policy and Tariff Policy."

[Emphasis supplied in each of the paragraphs]

17 Thus, a Division Bench of High Court of Judicature for Rajasthan at Jaipur, Bench Jaipur, held that changes in Regulations 4 and 5 impugned in those petitions were, in any manner, neither violative of any of the provisions of the Electricity Act, 2003, Rules and Regulations made thereunder nor ultra vires Articles 14, 19(1)(g) and 300A of the Constitution of India. The very findings based on the interpretation of the Electricity Act, 2003, Rules and Regulations made thereunder and the reasons assigned for arriving

at the finding about obligation upon the CPPs to purchase electricity from such sources, namely, by co-generation and generation of electricity from renewable sources of energy keeping in mind a percentage of total consumption of electricity in the area of distribution licensee which also included captive power plants situated in the area of distribution licensee and total consumption of electricity in such a case will not exclude consumption of electricity by the CPPs, and that, while interpreting Section 86(1)(e) of the Act, keeping in mind other functions enumerated in Section 86(4) of the Act and while discharging such functions, the State Electricity Commission shall be guided by the National Electricity Policy, 2005 and Tariff Policy 2006 framed under Section 3 and so provided under Section 86(4) of the Act, read with Sections 61 and 62 under the head 'Tariff of Part VII of the Act, 2003, are required to be adopted in the facts of these cases also as I am in respectful agreement with the same.

18 Thus, what emerges from the above judgment in the case of Ambuja Cements Limited (supra) is as under:

[i] That, obligations upon licensee are different and merely by the fact that no license is required to be obtained by the petitioners for establishing, operating and maintaining captive power plant by virtue of Sections 7 and 9 of the

Act of 2003, it cannot be inferred that such CPPs are out of regulatory regime of SERC and that the CPPs cannot be fastened with the obligation to purchase energy from renewable sources under the impugned Regulations.

[ii] That CPP is obligated entity and the provisions made with respect to obligations and liabilities for licensee cannot come in the way to carry out the objectives of the Act of 2003, National Electricity Policy and Tariff Policy.

[iii] From a conjoint reading of Sections 86(1)(e), 53(e) and 60 with regard to discharge of functions by the Regulatory Commission for promoting co-generation and generation of electricity from renewable sources of energy and in consultation with the State Government to specify suitable measures for keeping by a generating company or licensee the maps, plans and sections relating to supply or transmission of electricity and also about market domination, etc. it empowers the Regulatory Commission to issue directions not only to the licensee but also to the generating company in certain eventualities.

[iv] The Regulations are framed in exercise of powers under Section 181 read with Section 86(1) (e) of the Act of 2003 and it is for promoting co-generation and generation of electricity from

renewable sources of energy only.

[v] That, Section 86(1)(e) of the Act of 2003 empowers the Regulatory Commission to direct captive power plant operators to purchase energy from renewable sources and the basic requirement is of applying criteria of considering percentage of total consumption of electricity in the area of distribution licensee. That, total consumption in an area of distribution licensee can be by three ways, namely, either supply through distribution licensee or supply from captive power plants by using lines and transmission lines of distribution licensee or from any other source by using transmission lines of distribution licensee. The fact remains that the area would always be of distribution licensee as the transmission lines and the system is of distribution licensee and, therefore, the phrase 'total consumption' is seen by consumers of distribution licensee, captive power plants and on supply through distribution licensee. Thus, the total consumption in the area of distribution licensee would be total consumption in all modes, otherwise serious consequences would follow.

[vi] The objective behind imposition of RE obligation upon captive power plants and open access consumers is to promote generation of electricity from renewable sources, so that it

would have long lasting impact in protecting environment and comparative data about consumption of fossil fuel like coal etc, power through thermal generation, which causes green house gases and carbon dioxide and other toxic gases resulting into hazardous effect on the health and global warming, etc. are seen in the context of duty cast under Article 51A(g) of the Constitution of India on the citizen to protect and improve the national environment for meaningful existence under Article 21 of the Constitution of India. With such avowed object if the Regulations are framed, it cannot be said that the Regulations are restrictive infringing any of the rights conferred upon the petitioners under Article 19(1)(g) of the Constitution of India nor the obligation can be said to be violative of Article 14 of the Constitution of India.

[vii] That, para 6.4 of the Tariff Policy also authorizes the Regulatory Commission to fix minimum percentage for purchase of energy from renewable sources and these provisions are not confined to distribution companies only. At the same time, para 5.12.1 of the National Electricity Policy also provides for non-conventional sources of energy as environment friendly and, therefore, RE obligations by the Regulations are just and proper. Even paras 5.12.2 and 5.2.24 of the National Electricity

Policy provide suitable measures for connectivity with grid and sale of electricity to any person and setting up of captive power plants are not only with a view to secure reliable, quality and cost effective power but also to facilitate creation of employment opportunities and to utilize electricity generated by large number of captive and standby generating stations in India, surplus capacity being supplied to the grid continuously or during certain time intervals.

[viii] Section 86(1)(e) provides independent functions. Section 86(1)(b) cannot control and confine the operation of Section 86(1)(e) with respect to distribution licensee alone, as contended by the learned counsel for the petitioners. Even Section 86(4) mandates Regulatory Commission to be guided by the National Electricity Policy, National Electricity Plan and Tariff Policy published under Section 3.

[ix] That, on an elaborate discussion with regard to interpretation of Section 86(1) of the Act, the contention of the petitioners that it is only about conferring general power to the Regulatory Commission to frame regulations in consonance with the Act and the Rules with a view to carry out the provisions of the said Act and none of the matters contained in clauses (a) to (zp) of Section 181(2) provides for framing of

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the impugned Regulations in respect of captive power plants, etc. and, therefore, it is beyond the rule making authority conferred upon the Regulatory Commission, is based upon misconception of interpretation of the provisions of Section 86(1)(e) of the Act in view of rejection of the submission that Section 86(1)(b) does not control operation of Section 86(1)(e).

[x] That, in PTC India Ltd (supra), the Apex Court has considered the scope and analysis of the Act of 2003 holding that the Act of 2003 contemplates three kinds of delegated legislation, firstly, under Section 176 Central Government correspondingly under Section 180 State Governments; secondly, under Section 177 the Central Authority; and, thirdly, under Section 178 the Central Commission, who can make regulations consistent with the Act and the Rules to carry out the provisions of the Act. That, likewise, SERC have corresponding power under Section 181 and, applying the test of 'general application', a Regulation stands on a higher pedestal vis-à-vis an order (decision) of CERC and such order shall be in conformity with the Regulations.

FURTHER FINDINGS

19 It is worth-noting that, under Part III, under the heading 'Generation of Electricity', Section 7 provides for generating company and

requirement for setting up of generating station; Section 8 is about hydro-electric generation; and Section 9 defines 'captive generation'. If definition of 'captive generation' under Section 9 is read in juxtaposition to definition of 'captive generating plant' under Section 2(8), a person can construct, maintain or operate captive generating plant and dedicated transmission line, and proviso to sub-section (1) of section 9 provides that supply of electricity from the captive generating plant through the grid shall be regulated in the same manner as the generating station of a generating company. The newly inserted proviso by the Act 26 of 2007 with effect from 15.6.2007 provides that no licence shall be required under the Act of 2003 for supply of electricity generated from a captive generating plant to any licensee in accordance with the provisions of the Act, Rules and Regulations made thereunder and to any consumer subject to the regulations made under sub-section (2) of Section 42. Thus, while dispensing with the requirement of obtaining licence by CGP/ CPP for supply of electricity generated from CGP, no exemption is given to CGP/ CPP to be regulated by the provisions of the Act, 2003, rules and regulations made thereunder other than the above and, therefore, CGP/ CPP is not absolved from obligation to be discharged under the impugned regulations. In addition to the above, as per sub-section (2) of section 9, a person constructing, maintaining, operating CGP/ CPP shall have also right to open access for the purposes of carrying electricity from his captive generating plant to the destination of his use and such open access shall be subject to availability of adequate transmission facility and such availability of transmission facility shall be determined by the Central Transmission Utility or the State Transmission Utility as the case may be and, thus, CGP/ CPP has to follow directions, orders, regulations, rules framed under provisions of the Act of 2003 for carrying out the purposes of the Act.

20 Inter-alia, if definition of 'captive generating plant' under Section 2(8) is seen, it means a power plant set up by any person to generate electricity primarily for his use and includes a

power plant set up by any co-operative society or association of person for generating electricity primarily for use of members of such cooperative society or association. Therefore, it is not that power plant set up by any person to generate electricity is exclusively for his own use. In a given case, electricity generated by CPP can be used for a purpose other than captive use in case of excess production of electricity. Thus, harmonious reading of Sections 86(1)(e), 2(12), 2(8) and 9 of the Act, with the decision of the Apex Court in Tata Power Company Limited (supra), and the decision of a Division Bench of the High Court of Judicature for Rajasthan at Jaipur, Bench Jaipur, in the case of Ambuja Cements Limited (supra), would mean that CPP is exempted from licence regime, but not from any other regulatory measures envisaged by the Electricity Act 2003, Rules and Regulations framed thereunder to carry out the provisions of the Act, 2003.

20.1 There is no discriminatory treatment to CPP nor promotion of co-generation and generation from renewable sources of energy can be equated or put on par with CPP and the classification is reasonable to that extent, namely, promoting co-generation and generation from renewable sources of energy for which RE obligation is cast upon the CPP, and is based on intelligible differentia and have rational with the objects sought to be achieved, namely, to protect environment and to reduce global warming, etc. coupled with survival and growth of units producing

electricity from renewable sources of energy.

Therefore, CPP may be a distinct entity enjoying certain benefits and privileges inter-alia non-subjecting it to licensing control of the authority or commissions, but, under an obligation to follow various directions issued by the Electricity Regulatory Commission in consonance with the Act of 2003, Rules and Regulations framed thereunder.

21 That a careful perusal of National Electricity Policy and Plan, Tariff Policy and National action Plan on Climate Change and provisions of Act, 2003, Rules and Regulations there under empowers the State Electricity Regularity Commission [SERC] to prescribe a certain percentage of total power purchased by the Grid from renewable based source and also preferential Tariff that may be followed for renewal based power. As held earlier, and followed in the case of Ambuja Cement [supra] SERC is a creature of statute under Part X under Section 82 of the act, 2003 and empowered to frame regulations under Section 181 which may be consistent with the Act and to carry out provisions of the Act.

21.1 If Section 86(1)(e) is analyzed in the context of overall Scheme of the Act, 2003, Rules, Regulations in juxtaposition to National Electricity Plan and Policy, Tariff Policy, it is about functions to be discharged by SERC.

Section 86(1)(e) is;

-to protect

-co-generation and generation of electricity from renewable source of energy

-by providing **suitable measures** [such measures have to be consistent and with a view to carry out provisions of the Act]

-for, viz. connectivity with the grid

-**sale** of electricity to any person

-also to specify

-for **purchase** of electricity from '**such sources**' meaning thereby renewable sources of energy on which co-generation and generation of energy is based

-for fixing percentage of total consumption of electricity in the area of distribution licensee is to be ascertained and calculated towards renewable purchase obligations. While undertaking exercise of calculating the total percentage of consumption in the area of distributive licensee, if consumption of electricity by CGP / CPP is excluded then it would not reflect correct data for SERC to take measures under Section 86(1)(e). Only because data pertaining to consumption of CGP is included in total consumption CGP does not become consumer so defined under the Act, 2003.

22 That contention of Mr. S.N.Soparkar that co-generation plant of petitioners of Special Civil Application No.791 of 2011 that it is based on fossil fuel and is non-conventional in view of decision in

the case of Lloyds Metal & Energy Ltd. [supra] of APTEL, though appears to be attractive on first blush but non-conventional energy cannot be equated always with renewable source of energy. That co-generation is a process simultaneously producing two or more forms of useful energy though never defines type of input or source of fuel to be used, but co-generation provided under Section 86(1)(e) of the Act, 2003 is not co-generation stand alone, but it is co-generation and generation of electricity from renewable sources of energy. Thus, a source or input of energy may be non-conventional in the sense that CGP or co-generation following innovative or advanced technology, which may be eco-friendly and reducing carbon credit, but only on that ground is not not the same renewable source of energy like hydro, wind, solar, biomass, bagasse, etc. That non-conventional energy always and for all purposes cannot be equated with non-renewable sources of energy.

22.1 That the judgment dated 26.04.2010 of the APTEL in Appeal No.57 of 2009 in the matter of Century Rayon Ltd. vs. Maharashtra Electricity Regulatory Commissioner & Ors. fell into consideration in Appeal No.53 of 2012 and by order dated 29.12.2011 interim relief to enable sale of electricity from co-generation plant based on industrial waste heat generated by the sponge iron plant with the use of fossil fuel [coal] and directions to be issued to the distribution licensee came to be rejected, but the issue that whether the distribution licensee would be

fastened with the obligation to purchase a percentage of its source from co-generation irrespective of fuel use being important issue came to be re-examined by the Full Bench and accordingly, upon an exercise undertaken about finality of the judgment dated 26.04.2010 in Appeal No.57 of 2009, it appears that the Full Bench of Appellate Tribunal for Electricity [Appellate Jurisdiction] in the case of Lloyds Metal & Energy Ltd. vs. Maharashtra State Electricity Distribution Company Limited in Appeal No.53 of 2012 considered the order dated 29.12.2011 rendered by the Division Bench of APTEL in Appeal No.57 of 2009 in the matter of Century Rayon Ltd. vs. Maharashtra Electricity Regulatory Commission and others and framed the following question:

“Whether the Distribution Licensees could be fastened with the obligation to purchase a percentage of its consumption from co-generation irrespective of the fuel used under Section 86(1) (e) of the Act 2003”.

The Full Bench of APTEL vide order dated 02.12.2013 passed in Appeal No.53 of 2012, held in para 39, as under:

“39. Summary of our findings:

Upon conjoint reading of the provisions of the Electricity Act, the National Electricity Policy,

Tariff Policy and the intent of the legislature while passing the Electricity Act as reflected in the Report of the standing Committee on Energy presented to Lok Sabha on 19.12.2002, we have come to the conclusion that a distribution company cannot be fastened with the obligation to pursue a percentage of its consumption from fossil fuel based co-generation under Section 86(1)(e) of the Electricity Act, 2003. Such purchase obligation 86(1)(e) can be fastened only from electricity generated from renewal sources of energy. **However, the State Commission can promote fossil fuel based co-generation by other measures such as facilitating sale of surplus electricity available at such co-generation plants in the interest of promoting energy efficiency and grid security, etc."**

Thus, judgment dated 26.04.2010 in Century Rayon [supra] [Appeal No.57 of 209]; judgment dated 17.04.2013 in IA 262 of 2012 in RP (DFR) No.1311 of 2012 in Appeal NO.57 of 2009 filed by Gujarat Electricity Regulatory Commission; judgment dated 30.01.2013 in Appeal No.54 of 2012 filed by M/s. Emami Paper Mills; judgment dated 31.01.2013 in Appeal no.59 of 2012 filed by M/s. Vedanta Aluminium Ltd. [VA]; and judgment dated 10.04.2013 in Appeal NO.125 of 2012 filed by M/s. Hindalco Industries Limited, all delivered by the APTEL have no significance and force of law in view of judgment dated 02.12.2013 rendered by the Full Bench of the APTEL in Appeal No. 53 of

2012.

That submissions about non-applicability of law laid down in Ambuja Cement [supra] rendered by a Division Bench of Rajasthan High Court, is also devoid of merit inasmuch as substantially the issue before Division Bench of Rajasthan High Court was about inclusion of CGP / CPP as obligated entity to purchase electricity from generating unit based on non-renewal source of energy.

23 At the cost of repetition, in exercise of powers under Section 3 for framing regulations for procurement and protection of energy from renewable sources, it is clear that an elaborate exercise is undertaken by the GERC defining the area of supply, distribution licensee, obligated entity and renewable sources of energy along with other definitions. It has also considered the quantum of RPO by defining purchase of electricity in kWh from renewable energy sources at a specified minimum percentage of their total consumption during a year and limiting such obligation upon the CPPs having installed capacity of 5 MW and above. Thus, all the objections are also considered by assigning reasons. The Commission has also considered various provisions of the Act and the functions to be discharged being a regulatory body only with a view to carry out the provisions of the Act of 2003 and the Rules made thereunder.

24 The GERC did keep in mind all the

representations submitted by the objectors before determining renewable purchase obligation [RPO] and, while doing so, the GERC also provided production capacity of electricity of CPPs and only those CPPs, who produce more than 5 MV of electricity, are brought within the purview of the RPO and, therefore, it would not hit or create imbalance in the functioning of the CPPs. The Commission also applied all the criteria including technical parameters and functioning capacity of CPP vis-à-vis interest of power generating plant in renewable source of energy and their survival in consonance with National Electricity Plan and Tariff Policy. That, Section 86(1)(e) of the Act is not only for promoting co-generation stand alone system, but, it is for promotion of co-generation and generation from renewable source of energy. In this context, if the definition contained in Section 2(12) of the Act is seen, it is clear that 'co-generation' means a process which simultaneously produces two or more forms of useful energy (including electricity). In the above process, excess energy is harnessed by a particular process and electricity is generated.

25 Since the procedure is duly followed by the Commission while framing the Regulations, namely, renewable purchase obligation or renewable energy certificate, it cannot be said that such an exercise by the Commission is, in any manner, unjust, unreasonable, arbitrary, discriminatory or contrary to

the provisions of the Electricity Act, 2003 or violative of Articles 14, 19 and 300A of the Constitution of India. As regards challenge to the authority and jurisdiction of the GERC to frame such regulations impugned in these petitions, I have already taken a view that the law laid down by a Division Bench of the High Court of Judicature for Rajasthan at Jaipur, Bench Jaipur, in the case of Ambuja Cements Limited (supra), in the context of the identical contentions raised by the parties therein, is applicable in the facts of the present cases also.

26 In the result, all these writ petitions stand dismissed with no order as to costs. Notice issued in each of the petition stand discharged.

27 Civil Applications filed by Indian Wind Energy Association for impleading as party raising contentions justifying impugned regulations, it is not in dispute that the challenge in all these writ petitions is to legality and validity of regulations and powers and jurisdiction of respondent GERC and further adjudicating such issues effectively, I am of the view that applicant(s) are neither proper nor necessary party and accordingly not to be imp leaded as party respondents and Civil Applications filed by Indian Wind Energy Association are hereby rejected. Similarly, Civil Applications filed by respondent Commissioner to join Union of India and other Central authorities are also de-void of merit and are hereby rejected.

(ANANT S.DAVE, J.)

At this state, learned counsels for the petitioners requested to stay the implementation, execution and operation of the impugned Regulations for a reasonable period.

Considering the overall facts and circumstances of the case, I am inclined to grant status quo as on today qua the impugned Regulations in each of the writ petitions till 23.04.2015.

(ANANT S.DAVE, J.)

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IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL NO. 847 of 2015
In SPECIAL CIVIL APPLICATION NO. 936 of 2011
With
LETTERS PATENT APPEAL NO. 598 of 2015
In
SPECIAL CIVIL APPLICATION NO. 171 of 2011
TO
LETTERS PATENT APPEAL NO. 601 of 2015
In
SPECIAL CIVIL APPLICATION NO. 597 of 2011
With
LETTERS PATENT APPEAL NO. 828 of 2015
In
SPECIAL CIVIL APPLICATION NO. 10471 of 2013
TO
LETTERS PATENT APPEAL NO. 829 of 2015
In
SPECIAL CIVIL APPLICATION NO. 7084 of 2011
With
LETTERS PATENT APPEAL NO. 832 of 2015
In
SPECIAL CIVIL APPLICATION NO. 791 of 2011
With
CIVIL APPLICATION NO. 4995 of 2015
In
LETTERS PATENT APPEAL NO. 847 of 2015
With
CIVIL APPLICATION NO. 4315 of 2015
In
LETTERS PATENT APPEAL NO. 598 of 2015
With
CIVIL APPLICATION NO. 4334 of 2015
In
LETTERS PATENT APPEAL NO. 599 of 2015
With
CIVIL APPLICATION NO. 4336 of 2015

In
LETTERS PATENT APPEAL NO. 600 of 2015
 With
CIVIL APPLICATION NO. 4338 of 2015
 In
LETTERS PATENT APPEAL NO. 601 of 2015
 With
CIVIL APPLICATION NO. 4779 of 2015
 In
LETTERS PATENT APPEAL NO. 829 of 2015
 With
CIVIL APPLICATION NO. 4778 of 2015
 In
LETTERS PATENT APPEAL NO. 828 of 2015
 With
CIVIL APPLICATION NO. 4804 of 2015
 In
LETTERS PATENT APPEAL NO. 832 of 2015

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ARVIND LIMITED(FORMERLY KNOWN THE ARVIND MILL S
 LIMITED....Appellant(s)

Versus

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

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Appearance in LPA Nos. 847, 598 to 601 of 2015 with C.A. Nos. 4995, 4315, 4334, 4336, 4338 of 2015:

MR SN SOPARKAR, SENIOR ADVOCATE WITH MR SANDEEP SINGHI,
 ADVOCATE FOR SINGHI & CO, ADVOCATE for the Appellant(s) No. 1
 MR KAMAL TRIVEDI, SENIOR COUNSEL WITH MR BD KARIA, ADVOCATE
 FOR BHARGAV KARIA & ASSO, ADVOCATE for the Respondent(s) No. 1

Appearance in LPA Nos. 828 & 829 of 2015 with C.A. Nos. 4779 & 4778 of 2015:

MR MIHIR JOSHI, SENIOR ADVOCATE WITH MR GAURAV MATHUR,
 ADVOCATE for the Appellant(s) No. 1
 MR KAMAL TRIVEDI, SENIOR COUNSEL WITH MR BD KARIA, ADVOCATE
 FOR BHARGAV KARIA & ASSO, ADVOCATE for the Respondent(s) No. 1

Appearance in LPA No. 832 of 2015 with C.A. No. 4804 of 2015:

MR RASESH SANJANWALA, SENIOR ADVOCATE WITH MR DILIP

KANOJIYA, ADVOCATE for the Appellant(s) No. 1
MR KAMAL TRIVEDI, SENIOR COUNSEL WITH MR BD KARIA, ADVOCATE
FOR BHARGAV KARIA & ASSO, ADVOCATE for the Respondent(s) No. 1

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CORAM: **HONOURABLE MR.JUSTICE KS JHAVERI**
and
HONOURABLE MR.JUSTICE A.G.URAIZEE

Date : 05/05/2015

ORAL ORDER

(PER : HONOURABLE MR.JUSTICE KS JHAVERI)

ORDER IN LETTERS PATENT APPEALS

At the request of learned counsels appearing for the parties, matters are peremptorily fixed for hearing on 11.08.2015. To be listed immediately after admission matters.

ORDER IN CIVIL APPLICATIONS

1. We have heard learned counsel appearing for the parties at length.
2. These applications have been filed praying for stay of the impugned CAV judgement and order dated 12.03.2015 passed by the learned Single Judge in Special Civil Application No. 936 of 2011 and other cognate matters pending the appeals.
3. Mr. Soparkar, learned Senior Counsel appearing for the has drawn the attention of this Court to the provisions of The Electricity Act, 2003 (hereinafter referred to as 'the Act')

more particularly Sections 2(8), 2(12) , 2(15) and the definition of non-conventional source. He has also drawn the attention of this Court to Sections 9, 68 and 86 of the Act and submitted that the impugned judgement and order passed by the learned Single Judge may be stayed by this Court as the same proceeds on erroneous reading and interpretation of the provisions of the Act, Regulations framed thereunder, National Electricity Policy as well as the Tariff Policy and the various orders passed by the Appellate Court. Sections 2(8), 2(12) , 2(15) are reproduced hereunder:

“2(8) “Captive generating plant” means a power plant set up by any person to generate electricity primarily for his own use and includes a power plant set up by any co-operative society or association of persons for generating electricity primarily for use of members of such cooperative society or association;

(12) “Cogeneration” means a process which simultaneously produces two or more forms of useful energy (including electricity);

(15) "consumer" means any person who is supplied with electricity for his own use by a licensee or the Government or by any other person engaged in the business of supplying electricity to the public under this Act or any other law for the time being in force and includes any person whose premises are for the time being connected for the purpose of receiving electricity with the works of a licensee, the Government or such other person, as the case may be”

3.1 Mr. Soparkar submitted that the fundamental issue concerning the applicability of the GERC (Procurement of Energy from Renewable Sources) Regulation 2010 (hereinafter referred to as ‘the Regulation’) raised by the applicants has not been considered and dealt with by the

learned Single Judge. He submitted that on a fair reading of Regulation 2.1(k) which defines obligated entity read with Regulation No. 3, it is clear that the regulations would apply to persons consuming electricity generated from 'conventional captive generation plant' having capacity of 5MW and above. He submitted that the use of word 'conventional' would exclude the applicants from the purview of the Regulation as the applicants have set up a co-generating captive power plant which is a non conventional power plant.

3.2 Mr. Soparkar submitted that the provisions of Section 86(1)(e) clearly sets out the apparent legislative intent to promote co-generation along with the promotion of generation of electricity from renewable sources of energy. The meaning of the term co-generation has to be understood as defined in Section 2(12) of the Act. He submitted that the respondent Commission clearly erred in interpreting section 86 by reading the word 'co-generation' along with generation of electricity from renewable sources of energy and suggesting that what is being promoted is co-generation from renewable sources of energy.

3.3 Mr. Soparkar further submitted that the learned Single Judge also failed to appreciate the National Electricity Policy in paragraphs 5.2.26 and 5.12.3 which encourages co-generation. He submitted that similarly the tariff policy dated 06.01.2006 in clauses 6.3 and 6.4 also encourages co-generation. He submitted that in addition to the National policy as well as Tariff policy the applicants had produced several documents including the objections filed before the Commission which clearly recognized co-generation as a

technology to be promoted.

3.4 Mr. Soparkar further submitted that while other Regulatory Commissions have issued regulations fastening Renewable Purchase Obligation (RPO) on captive consumers, the said regulations do not cover co-generating units. He submitted that section 86(1)(e) covers distribution licensees and the total consumption by the consumers who are sold power by the distribution licensees in their area of supply.

3.5 Mr. Soparkar submitted that the learned Single Judge has erred in relying upon the decision of the Appellate Tribunal in **Appeal No. 57 of 2009 dated 26.04.2010 in the case of Century Rayon vs. Maharashtra Electricity Regulatory Commission, Maharashtra Energy Development Agency and Maharashtra State Electricity Distribution Co. Ltd.** He submitted that the Tribunal in the said matter was considering the question whether a distribution licensee should be obligated to purchase the percentage of its consumption from co-generation irrespective of the fuel used under Section 86(1)(e) of the Act. He submitted that the said question is distinct from the question arising in the present matters as to whether co-generating CPPs which ought to be promoted should be obligated to compulsorily purchase power from renewable sources of energy. In this regard he has relied upon paragraphs 16, 25, 26, 27 and 45 which are reproduced hereunder:

“16. In the above context, the contention that the sale of electricity to any person is to be read in the context of the sale by the co-generator or the generator of electricity from the renewable source of energy does not merit consideration. The

Appellant is a co-generator. It produces energy more efficiently as compared to conventional power plants which is to be treated at par with the electricity from the renewable source of generation. When such being the case, the SSR Page 11 of 37 Judgment in Appeal No. 57 of 2009 fastening of obligation on the co-generator to procure electricity from renewable energy producer would defeat the object of section 86(1) (e). These two categories of generators namely: (i) Co-generators and (ii) generators of electricity through renewable sources of energy are required to sell the electricity to any person as may be directed by the State Commission. Any obligation for purchase of electricity from these two sources can be imposed only on the distribution licensee and not on the captive consumers who are generating electricity through co-generation irrespective of the fuel used.

25. It cannot be disputed that the energy efficiency of the co-generation plant is almost double than the normal power plants because normal power plants release residual energy SSR Page 17 of 37 Judgment in Appeal No. 57 of 2009 in the atmosphere, whereas the co-generation plant utilizes the energy to the maximum possible. It is established, as mentioned earlier, that the energy efficiency of the normal power plant is about 50 to 60% whereas the energy efficiency of the co-generation plant is about 80-85%.

26. Internationally, the Governments have been promoting co-generation of energy so that the precious fuel is not wasted and the environment is protected. Even the municipalities/local authorities have been encouraging the simultaneous use of the residual wastes. It is for this reason that the Electricity Act 2003 has cast obligation on the State Commissions to promote co-generation as well as the generation of electricity through renewable energy sources.

27. This aspect can be viewed from yet another angle also. As mentioned earlier, we are called upon to decide the question as to whether co-generation projects based on fossil fuel are not

entitled to be treated at par with the eligible SSR Page 18 of 37 Judgment in Appeal No. 57 of 2009 renewable energy sources for renewable projects obligation. To answer this question we have to see the scheme of the Electricity Act as well as the National Electricity Policy and National Tariff Policy. Under the Act there are three categories of sources of energy each being accorded with a different treatment namely -

(i) Conventional Power Plants such as Thermal, Hydro and Nuclear Power Plants.

(ii) Renewal source of energy.

(iii) Non-conventional plants including co-generation plants.

45. Summary of our conclusions is given below:-

(I) The plain reading of Section 86(1)(e) does not show that the expression 'co-generation' means SSR Page 33 of 37 Judgment in Appeal No. 57 of 2009 cogeneration from renewable sources alone. The meaning of the term 'co-generation' has to be understood as defined in definition Section 2 (12) of the Act.

(II) As per Section 86(1)(e), there are two categories of `generators namely (1) co-generators (2) Generators of electricity through renewable sources of energy. It is clear from this Section that both these categories must be promoted by the State Commission by directing the distribution licensees to purchase electricity from both of these categories.

(III) The fastening of the obligation on the co-generator to procure electricity from renewable energy procures would defeat the object of Section 86 (1)(e).

(IV) The clear meaning of the words contained in Section 86(1)(e) is that both are different and both are required to be promoted and as such the fastening of liability on SSR Page 34 of 37 Judgment in Appeal No. 57 of 2009 one in preference to the other is totally contrary to the legislative interest.

(V) Under the scheme of the Act, both renewable source of energy and cogeneration power plant, are equally entitled to be promoted by State Commission through the suitable methods and suitable directions, in view of the fact that cogeneration plants, who provide many number of benefits to environment as well as to the public at large, are to be entitled to be treated at par with the other renewable energy sources.

(VI) The intention of the legislature is to clearly promote cogeneration in this industry generally irrespective of the nature of the fuel used for such cogeneration and not cogeneration or generation from renewable energy sources alone. “

4. Mr. Mihir Joshi, learned Senior Counsel supporting the arguments advanced by Mr. Soparkar submitted that the applicants are operation the CPP in co-generation mode wherein steam is produced which runs turbines (to generate electricity) and is also used in the production process. He submitted that in case RPO is imposed and power is to be purchased then CPP generation will have to be backed down and this will directly affect the availability of steam leading to reduction in production and for fulfilling requirement of steam, additional fossil fuel will have to be burnt.

4.1 Mr. Joshi further submitted that under the RPO regulations, GERC is to fix a quantum (as a percentage of total consumption of electricity consumed in the area of a distribution licensee). He submitted that this quantum is fixed. The distribution licensees are already procuring such power and selling it to consumers including applicants who have contract demand. He submitted that it is not a case where renewable energy is not being procured at all but the only question is whether private parties can be made liable to

procure this power.

4.2 Mr. Joshi further submitted that CPPs are set up pursuant to impetus being offered by the Government on incurring huge cost including recurring cost. He submitted that the applicants today have sufficient power and the regulations result in the applicants having to enter into contracts with private generators of renewable power. He submitted that since GERC is not authorised to fix tariff in light of proviso to Section 86(1)(e) for bilateral transactions, there is no certainty as to at what cost the generators will sell power.

4.3 Mr. Joshi submitted that GERC vide its judgement dated 16.01.2015 in Petition No. 1437 of 2014 has recorded that some renewable generators are offering to sell at a price higher than the preferential tariff even to the distribution licensees. He has drawn the attention of this Court to paragraph 20.6 of the said judgement in this regard. He submitted that this will cause grave prejudice since the applicants will be in non-compliance of unwillingness of renewable energy generators to agree on a price.

4.4 Mr. Joshi contended that GERC in its judgement dated 16.02.2015 in Petition No. 1437 and 1442 of 2014 found that sufficient renewable power is not available and has curtailed the obligation of the distribution licensees in the State of Gujarat. He submitted that in case renewable power is not available, the applicants will fail in fulfilling their obligation since procurement of power is the only obligation. He submitted that the regulations however recognise that

Renewable Energy Certificates (RECs) are valid instruments for discharging RPO and it is unfair to ask the applicants to purchase RECs when renewable power is actually not available. He submitted that RECs are a double benefit to the generator who gets cost of power as well as REC and the applicants will have to generate power to the tune of their RPO and incur cost and will have to make a second payment for the RECs for the same quantum of power which is grossly unfair more so when GERC in paragraph 20.15 of judgement dated 16.01.2015 in Petition No. 1437 of 2014 has found that REC is an additional burden and only aids the commercial interest of renewable generators.

5. Mr. Kamal Trivedi, learned Senior Advocate appearing with Mr. B.D. Karia, learned advocate for Bhargav Karia & Associates submitted that Gujarat Electricity Regulatory Commission (Procurement of Energy from Renewable Sources) Regulation, 2010 ('the Regulations' for short) framed in the exercise of the powers conferred under Section 61, 66, 86(1)(e) and 181 of the Electricity Act, 2003 ('the Act' for short) are statutory in nature and as per the judgment of the Apex Court in the case of **Bhavesh D. Parish & Ors. Vs. Union of India reported in (2000) 5 SCC 471**, there is always a presumption in favour of validity of any legislation, unless the same is set aside after final hearing and therefore, no interim relief can be granted for staying the legislation. In view of this, the appellants do not deserve any interim relief, more particularly in light of following observations of the Apex court in the aforesaid judgment.

"30Merely because a statute comes up for examination and some arguable point is raised,

which persuades the courts to consider controversy, the legislative will should not normally be put under suspension pending such consideration. It is now well settled that there is always a presumption in favour of constitutional validity of any legislation, unless the same is set aside after final hearing and, therefore, the tendency to grant stay of legislation relating to economic reforms, at the interim stage, cannot be understood.... “

5.1 Sections 61 and 66 of the Act are also reproduced hereunder:

Section 61. (Tariff regulations):

The Appropriate Commission shall, subject to the provisions of this Act, specify the terms and conditions for the determination of tariff, and in doing so, shall be guided by the following, namely:-

- (a) the principles and methodologies specified by the Central Commission for determination of the tariff applicable to generating companies and transmission licensees;
- (b) the generation, transmission, distribution and supply of electricity are conducted on commercial principles;
- (c) the factors which would encourage competition, efficiency, economical use of the resources, good performance and optimum investments;
- (d) safeguarding of consumers' interest and at the same time, recovery of the cost of electricity in a reasonable manner;
- (e) the principles rewarding efficiency in performance;
- (f) multi year tariff principles; 1[(g) that the tariff progressively reflects the cost of supply of electricity and also, reduces cross-subsidies in the manner specified by the Appropriate Commission;]
- (h) the promotion of co-generation and generation of electricity from renewable sources of energy;
- (i) the National Electricity Policy and tariff policy:

Provided that the terms and conditions for determination of tariff under the Electricity (Supply) Act, 1948, the Electricity Regulatory

Commission Act, 1998 and the enactments specified in the Schedule as they stood immediately before the appointed date, shall continue to apply for a period of one year or until the terms and conditions for tariff are specified under this section, whichever is earlier.

Section 66. (Development of market):

The Appropriate Commission shall endeavour to promote the development of a market (including trading) in power in such manner as may be specified and shall be guided by the National Electricity Policy referred to in section 3 in this regard.

5.2 Mr. Trivedi submitted that in fact, validity of the Regulations has been examined in great detail by the learned single Judge in the judgment under challenge wherein, it has been found that the respondent commission has duly considered all the objections and applied all the criteria in consonance with the National Action Plan and Tariff Policy and has ultimately found nothing objectionable in the Regulations. In this view of the matter, unless the appeals are finally heard and judgment of the learned single Judge under challenge is set aside, no question arises of granting any interim relief in the matter.

5.3 Mr. Trivedi submitted that apart from what is mentioned above, objections of the appellants in the matter of less availability of renewable sources of energy, higher prices being fixed by the persons selling such renewable sources of energy etc., Regulation 4.2 of the Regulations clearly enables the obligated entity to approach the commission, keeping in view the supply constraints or other factors beyond the control, with a request to revise the percentage targets per

year. Similarly, Regulation 9.1 enables the obligated entity to approach the commission to carry forward the compliance requirement to the next year, in case of non-availability of power from renewable energy sources. At the same time, Regulation 5 enables obligated entity to purchase renewable energy certificates against the discharge of mandatory obligations. In view of this, there is a sufficient elbow room for the obligated party to take care of any of its genuine difficulties in discharge of its Renewable Purchase Obligation ('RPO' for short), and hence, no interim relief against the execution, implementation and operation of the regulation can be granted.

5.4 Mr. Trivedi contended that a combined reading of section 2(3) read with section 2(12) read with section 61 and section 86(1)(e) of the Act makes it very clear that the word 'and' between the words 'Co-generation' and 'generation' in section 86(1)(e), is conjunctive, and not disjunctive and hence both co-generation and generation, from the renewal sources of energy requires promotion. If the said co-generation and generation of electrical energy is from non-conventional i.e. renewable sources of energy i.e. wind, solar, hydro, bio-mass, no RPO is to be discharged, however, if in co-generation or generation of electrical energy or generation from captive power plants, conventional sources are utilized i.e. Coal, Oil, Gas, fossil fuel, then in that case, RPO is required to be discharged.

5.5 Mr. Trivedi submitted that in view of the above, merely because some of the appellants are engaged in co-generation of electrical energy from conventional sources, even though

they generate renewal energy as by-product, they cannot be exempted from discharge of the RPO. Similarly, captive power plant not connected with the grid and independent by itself is also covered under the Regulation when the generator consumes electricity produced by such captive power plants, inasmuch as RPO under the Regulation is on consumption of electricity.

5.6 Mr. Trivedi submitted that apart from what is mentioned above, merely, because in some of the States, co-generation is exempt from RPO, the same cannot ipso facto invalidate similar provisions contained in the Regulations in question. Hon'ble Rajasthan High Court has dealt with this aspect in extenso and the learned single Judge has also taken note of the same. This apart learned single Judge has dealt with all the aspects of the matter in paras 20, 22.1 and 23 of the judgment under challenge.

5.7 Mr. Trivedi submitted that in view of National Action Plan as well as National Electricity Policy more particularly clause 5.12 co-generation and generation of electricity from non-conventional sources are required to be promoted by the Commissions by providing suitable measures, etc. and that 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. Thus, it is the demand of the nation that conventional sources are preserved from being wasted and non-conventional sources of energy are used even for taking care of global warming. Thus, it would be in the interest of the Society at large that the appellants are directed to comply with the

regulations that may be brought in force instead of granting interim relief against operation of the same.

6. At the outset it shall be relevant to peruse section 86(1) (e) and the same is reproduced under:

“Section 86. (Functions of State Commission): ---
(1) The State Commission shall discharge the following functions, namely: -

...
(e) promote co-generation and generation of electricity from renewable sources of energy by providing suitable measures for connectivity with the grid and sale of electricity to any person, and also specify, for purchase of electricity from such sources, a percentage of the total consumption of electricity in the area of a distribution licensee;
...”

7. As as a result of hearing and perusal of records we are of the view that the statutory regulations are framed by statutory authority after inviting objections from concerned industry and therefore the same has statutory force. The GERC seems to have considered the objections raised by all the objectors while framing the regulations with regard to applicability of the RPO to CPP consumers No doubt the same has not yet been given effect from 2011 but now it has been upheld by the learned Single Judge.

7.1 Moreover, in view of the observations made by the Apex Court in the case of **Bhavesh D. Parish (supra)**, it will not be appropriate to stay the impugned order by the learned Single Judge. The Apex Court has categorically held that merely because a statute comes up for examination and some arguable point is raised, which persuades the courts to

consider controversy, the legislative will should not normally be put under suspension pending such consideration. It has also observed that there is always a presumption in favour of constitutional validity of any legislation, unless the same is set aside after final hearing and, therefore, the tendency to grant stay of legislation relating to economic reforms, at the interim stage, cannot be understood.

7.2 However, keeping in mind the interest of both the sides in these applications, it is directed that the implementation of the Regulations shall be subject to the result of the appeals. We are of the opinion that they do not fall within the definition of conventional energy as contemplated under the provisions. Prima facie what we envisage is saving natural resources and not from by product or any other product which is derived from processes coming under co-generation and that the emphasis in section 86(1)(e) is to promote non conventional and renewable sources of energy and not to promote use of fossil fuels. The observations made by this Court in these applications are prima facie and the same shall be considered in detail while hearing the appeals on merits as at this stage any observations made on the merit of the matters will prejudice the case of both the sides.

8. Therefore, instead of granting stay of the impugned judgement and order it shall be in the interest of justice to observe that the said regulations shall though come into force they shall be subject to the final decision given in the appeals. Applications are disposed of accordingly. Rule is discharged accordingly.

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(K.S.JHAVERI, J.)

(A.G.URAIZEE, J)

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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, 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 sub-section (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 fulfill the renewable purchase obligation;
 - j) **'Power Exchange'** means that power exchange which operates with the approval of the Commission;

- k) **'preferential tariff'** means the tariff fixed by the Appropriate Commission for sale of energy, from a generating station using renewable energy sources, to a distribution licensee;
- 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.

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 fulfills 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 at a preferential tariff determined by the Appropriate Commission; and
- c. it sells the electricity generated either (i) to the distribution licensee of the area in which the eligible entity is located, at a price not exceeding the pooled cost of power purchase of such distribution licensee, or (ii) to any other licensee or to an open access consumer at a mutually agreed price, or through power exchange at market determined price.

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.

- (2) The generating company 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 willful 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.

(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 entities shall apply to the Central Agency for Certificates within three months after corresponding generation from eligible renewable energy projects:
- Provided that the application for issuance of certificates may be made on fortnightly basis, that is, on the first day of the month or on the fifteenth day of the month.
- (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, 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 into the grid.

8. Dealing in the certificates

- (1) Unless otherwise specifically permitted by the Commission by order, the Certificates shall be dealt only through the Power Exchange and not in any other manner.
- (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.

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 preferential tariff

(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) The Certificate once issued shall remain valid for three hundred and sixty five days from the date of issuance of such Certificate:

Provided 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 three hundred and sixty five days, even if accreditation of such entity is revoked at a later date.

- (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.

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

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.

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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.

CENTRAL ELECTRICITY REGULATORY COMMISSION **170**
NEW DELHI

Petition No. 02/SM/2017

Date of Order: 30TH March, 2017

Coram:

Shri Gireesh B. Pradhan, Chairperson

Shri A.K. Singhal, Member

Shri A.S. Bakshi, Member

Dr. M.K. Iyer, Member

IN THE MATTER OF

Determination of Forbearance and Floor Price for the REC framework to be applicable

from 1st April 2017.

ORDER

A. BACKGROUND

1. In exercise of the power under section 66 and 178 of the Electricity Act, 2003 the Commission has notified the Central Electricity Regulatory Commission (Terms and Conditions for recognition and issuance of Renewable Energy Certificate for Renewable Energy Generation) Regulations, 2010 (hereafter REC Regulations).
2. As per the first proviso to clause (1) of Regulation 9 of the REC Regulations, the Commission may in consultation with the Central Agency (Power System Operation Corporation Limited) and Forum of Regulators from time to time provide for floor price and forbearance price separately for Solar and Non-solar Renewable Energy Certificates.

3. Further, Clause (2) of Regulation 9 of the REC Regulations provides for the guiding principles for determining the forbearance and floor price for Solar and Non-solar Certificates. The relevant provisions are extracted as under:

9. Pricing of Certificate:

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

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

(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 preferential tariff*
 - ii. expected renewable energy capacity under mechanism of certificates;*
- (d) Renewable Purchase obligation targets set by State Commissions”*

4. In pursuance of the powers vested under proviso to the Regulation 9 (1) of REC Regulations, the Commission came out with an Order dated 1st June, 2010 for ‘Determination of Forbearance and Floor Price for the REC framework’ (Suo Motu Petition No.99/2010) and prescribed forbearance price and floor price for dealing in Certificates under the REC Regulations:

	Non Solar REC (Rs / MWh)	Solar REC (Rs/ MWh)
Forbearance Price	3,900	17,000
Floor Price	1,500	12,000

5. Above determined forbearance price and floor price were valid for the control period upto 31.03.2012.
6. Accordingly, based on the guiding principles specified in Para 3, the Commission vide its suo-motu Order (No 142/2011) dated 23.08.2011 determined the following forbearance and floor prices for the control period from 01.04.2012 to 31.03.2017:

	Non Solar REC (Rs/ MWh)	Solar REC (Rs/ MWh)
Forbearance Price	3,300	13,400
Floor Price	1,500	9,300

7. Subsequently, based on review of solar PV tariff, the Commission vide its suo-motu Order (No. SM/016/2014 dated 30.12.2014) determined the following forbearance and floor price for Solar REC for the remaining period of the control period i.e. up to 31.03.2017. The forbearance and floor price for Non Solar REC were left unchanged.

	Solar REC (Rs/ MWh)
Forbearance Price	5,800
Floor Price	3,500

Further, Clauses (7) & (8) of Regulation 7 of the REC Regulations provide for the guiding principles for quantum of Certificate to be issued to the eligible entities being the solar generating companies registered under REC framework prior to 01.01.2015. The relevant provisions are extracted as under:

....

(7) The Commission shall determine through a separate order, the quantum of Certificate to be issued to the eligible entities being the solar generating companies registered under REC framework prior to 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:

$$\text{Vintage Multiplier} = \text{Floor Price of Base Year} / \text{Current Year Floor Price}$$

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 for the period from 1st January 2015 up to 31st March 2017, after which such projects shall be eligible for one REC for one megawatt hour of electricity generated."

Based on the above, a vintage multiplier of 2.66 was provided to solar generating companies registered under REC framework prior to 1st January 2015. The vintage multiplier is valid up to 31st March 2017.

8. The Commission proposed the following forbearance and floor price for dealing in Certificates under the REC Regulations with effect from 1st April 2017 vide Suo-Motu Order dated 28.02.2017 (Petition No. 02/SM/2017):

	Non Solar REC (Rs/ MWh)	Solar REC (Rs/ MWh)
Forbearance Price	2,900	2,500
Floor Price	1,000	1,000

The above stated forbearance and floor prices shall be effective from 01.04.2017 and shall remain valid until further orders by the Commission.

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No vintage multiplier has been proposed for any technology and the existing vintage multiplier for solar generating technologies registered in REC framework prior to 01.01.2015 shall expire after 31.03.2017.

9. Comments / suggestions of the stakeholders on the above proposal were invited by 20.03.2017. In response to above, 108 stakeholders submitted their comments/suggestions. The list of such stakeholders is attached as Annexure-A. A public hearing was held on 22.03.2017 where 14 stakeholders made written or oral presentations.

B. CONSIDERATION OF VIEWS OF THE STAKEHOLDERS AND ANALYSIS & FINDINGS OF THE COMMISSION ON IMPORTANT ISSUES

I. Impact on Existing Inventory due to decrease in REC price

Stakeholder Comments

- **Modi Group (Jai Mangal Infra Powers Pvt. Ltd.)** has suggested that the efforts for clearing REC backlog are minimal, however the price of REC is in favor of industries/Discoms who have not followed the RPO.
- **Omega Renk Bearings Pvt. Ltd.** has submitted that the projects commissioned earlier were much costlier and they thought that the Govt. would seek to offset the investment through REC scheme for generating green power. Less than 1.27% of RECs are getting traded in power exchanges. Low Floor Price on unsold

accumulated RECs and no vintage multiplier will lead to considerable financial loss. They have suggested to maintain the existing floor price for the unsold REC or to add multiplier to bring it in line with new price. They have also suggested to increase the proposed floor price from Rs 1000 to Rs 3000/REC.

- **DCM Shriram Industries Limited, IWPA, IBPA, Orient Green Power Company Ltd. and UP Sugar Mills Cogen Association** have submitted that significant loss would have to be borne by RECs projects on existing inventory calculated even on the floor price. The existing inventory is the result of lack of demand of RECs, which has been caused due to lack of RPO enforcement by the States. This represents a significant failure on the part of State Regulators, the burden of which will have to be borne by RE projects for no fault of theirs. RE projects had been set-up by various power generators assuming the floor prices & forbearance price at a particular level. Now drastically reducing these prices will have significant adverse impact on the viability of these projects.

The benefit of the price reduction will primarily go to those obligated entities that have not followed the requirement of law so far and have not fulfilled their RPO obligations. Such obligated entities will benefit as they can meet their past obligations at much lower cost. They have requested that if reduction in rates is to be implemented as proposed, it should be prospective i.e. w.e.f. 01.04.2017 and the RECs issued after April 2017 should be used only for compliance of RPO pertaining to FY 2017-18 and onwards. While, existing RECs should continue to be traded at the existing floor and forbearance price, and obligated entities should be required to meet their obligations pertaining to FY 2016-17 and earlier through the existing RECs only.

- **AA Energy Ltd.** has submitted that they will face a loss of Rs 1.28 crores upon implementation of proposed revision of REC prices. They have suggested to protect the value of the inventory of RECs accumulated by the RE projects by providing an appropriate vintage multiplier on the inventory. In addition they have request that the obligated entities which have been in default should be asked to meet past RPO compliance on the basis of the value of RECs traded in the past. This shall be in addition to the appropriate penal measures as per the RPO regulations. Without this measure the price reduction will have the effect of rewarding the defaulter.
- **JVS Export, Shri Dhanalakshmi Spinnintex Pvt. Ltd., Chiranji Lal Spinners Pvt. Ltd. and Shiny Knitwear** have commented that in Tamil Nadu, each unit of energy generated through a REC windmill will get the APPC price which is tabulated below from time to time (APPC range from 2012-13 till 2016-17 are referred). By the sale of REC, a unit of electricity generated through REC windmill would fetch a price of Rs.1.50 gross. By adding this with the APPC price, the net rate will be $\text{Rs.}2.65 + \text{Rs.}1.50 = \text{Rs.}4.15$ / Unit. If it is reduced to Re. 1 per unit, it will fetch only a price of $\text{Rs.}2.65 + \text{Re. } 1.00 = \text{Rs.}3.65$. Hence, the proposal brought for finalization to reduce the Floor price of Non-Solar REC from Rs.1500 to Rs.1000, would result in to a price of Re. 1 only for every unit of energy which will be 2/3 of the price presently available. Factors like high delay in payment of money by the Utility, TANGEDCO to generators of wind energy were not factored. In addition, REC windmills, when captively consuming their own energy, have to pay an extra cost of Rs.0.65/Unit when compared to the Non REC windmills that continue to exist in preferential tariff. They have requested to withdraw the proposal and accordingly to continue with the existing Floor price or to increase the same considerably to ensure proper RoI.

- **IWPA and Oswal Woollen Mills Ltd. Nahar** commented that if the said generators would not have participated in the REC mechanism and would have chosen to supply power at preferential tariff, it would have recovered the entire preferential tariff with the guaranteed return on equity. In the event of delay in payment of preferential tariff, the generator would have been entitled to late / delayed payment surcharge from the distribution licensees. However, generators who have opted for REC mechanism have not been able to recover a part of the tariff component for last three years and have also lost earnings by way of interest on such money due to which in any case the floor price of 1500 has come down for them to much lower level. They have request not to reduce the floor price of the RECs and keep it aligned in such a manner that the total recovery of the generator from APPC and the floor price of REC is equivalent to the preferential tariff of such State.
- **Indian Energy Exchange** has submitted that continuous reduction in Forbearance and Floor Price of REC is incentive to defaulting obligated entities.
- **IL&FS** has emphasized that it is imperative that the Commission should clarify its stand on the unsold stock of RECs in the market and a clear roadmap for backlog of unsold RECs should be made and communicated to restore the investor's interest in this mechanism.
- **Indian Sugar Mills Association** has submitted that proposed reduction in floor and forbearance price for REC framework for Non-Solar projects especially the cogenerating plants of sugar mills will only worsen situation as with 5th Amendment to REC Regulations, co-gen plants were made ineligible for RECs and the plants already have a huge inventory of RECs lying with them. It is requested that present

rate must be continued for at-least next 3 years for reassuring viability of projects established.

- **Indian Paper Manufacturer's Association, JK Paper Limited** has submitted that Paper Mills have incurred huge expenditure in installation of plant and equipment in the last few years to avail of the REC mechanism based on the floor price of Non-Solar REC of INR 1,500. Some new projects were conceptualised and undertaken keeping the floor price of REC benefit in view. The entire project investment undertaken by Paper Mills will become unviable if the floor price of Non-Solar REC is reduced by 33% to INR 1,000 from 1st April 2017 as their revenue model will be impacted significantly.

All Paper Mills have significant unsold stock of Non-Solar RECs, which in their book of accounts is valued at the floor price of INR 1,500 per REC. Reduction in the floor price will result in significant loss.

In addition to the above stakeholders, **Kanchanjunga Power Company Private Limited and Himalaya Power Producers Association** also have have requested that the floor price of Non-Solar RECs should not be revised downwards and should be retained at INR 1,500.

- **Orient Green Power Company Limited and IBPA** have submitted that the carrying cost of existing stock of RECs shall be taken into consideration and the present Non-Solar floor rate of Rs 1500/REC shall be continued beyond 31.03.2017 for the next 5 years. They also agree for revision in forbearance price of RECs.

- **Prayas Energy Group** has submitted that the provision in Clause 8 of the draft Order “The following forbearance and floor price shall be valid until further orders by the Commission” would allow the Commission to revise these bands in a more timely manner depending on market dynamics) and may be more appropriate going forward rather than having a lock in for a certain fixed number of years.
- **The KCP Limited** has submitted that their Solar REC inventory as on March 2017 is 12100 which is worth Rs 4.235 crores considering the existing floor price of Rs 3500 and Rs 1.21 crores considering the proposed floor price of Rs 1000. Their Solar project shall face a loss of Rs 3.025 crores due to the proposed reduction in prices.
- **REConnect Energy Solutions Pvt. Ltd., Bansal Wind Mill Pvt. Ltd., Sri Sivajothi Spinning Mills (P) Ltd., Fab Colors, Baroda Moulds & Dies, Electrical Controls & Systems, Kaizen Switchgear Products, Kasturi & Sons Ltd., SRG Apparels Pvt. Ltd., Karur K.C.P Packagings Ltd., Manidhari Gums & Chemicals, ETA Power Gen Pvt. Ltd., Rane TRW Steering Systems Pvt Ltd, Armstrong Power Systems Pvt. Ltd., Bonafide Himachalies Hydro Power Developers Association, Jindal ITF Urban Infrastructure Limited, Naga Limited, Sanjiv Prakashan, Kasturi Estates Pvt. Ltd.** have submitted REC projects will see loss of Rs 1,866 crore due to reduction in the REC prices on existing inventory.

All these stakeholders along with **IWPA, UP Sugar Mills Cogen Association, Jindal ITF Urban Infrastructure Limited, Power & Energy Consultants and Ujaas Energy Limited** have submitted that the benefit of the price reduction will primarily go to those obligated entities that have not followed the requirement of law

so far and have not fulfilled their RPO obligations as they can meet their past obligations at much lower cost.

They have suggested that RECs issued after April 2017 should be used only for compliance of RPO pertaining to FY 2017-18 and onwards. (Referred to as 'REC17'). This shall split the RECs markets into two parts - RECs representing RE generation prior to March 2017 and after April 2017.

Advantages of the approach:-

- RE projects will not have to incur a loss of their inventory and shall not render as NPAs
- It will avoid the windfall gain accruing to defaulting Obligated Entities
- If a significant amount of vintage multipliers are issued then the market will register a huge increase in inventory without the consequent commitment of increase in demand, However, if a REC2017 market is created, it will continue to have high clearing ratios and better balance between demand and supply.
- **Mytrah Energy (India) Pvt. Ltd.** has submitted that over the last 6 years, all previous trades have been concluded and settled only on floor price, any further reduction in the price might dent investor's confidence and will make the project unviable.
- **Klassic Wheels Pvt. Ltd., Uma Corporation, Gaurav Agro Pipes, Bothara Agro Equipments Pvt. Ltd., Paras PVC Pipes & Fittings Pvt. Ltd., Pooja Renewable Energy Pvt. Ltd., Kasturi Foundry Pvt. Ltd. and Advik Hitech Pvt. Ltd.** have

submitted that reduction in floor price shall make their project unviable and will run the risk of project being regarded as NPA by banks as the REC trading is already very low. They have submitted details of their expected loss to the tune of Rs 24.95 – 41.60 lacs/year due to reduction in floor price of Solar REC.

- **Lohia Developers India Pvt. Ltd., Lohia Gramin Vikas Pvt. Ltd. and DesignCo** have submitted that they have setup Solar plants in 2013-14, at that time, the companies have infused a capital investment Rs. 17 Crore, Rs 13 crores and Rs 43.18 crores respectively Out of the total capital investment of Rs. 17.00 Crore, the companies have taken a term loan of Rs.9.38 Crore, Rs 4.10 crore and Rs 16.25 crores from Punjab National Bank. In FY 2013-14 & 2014-15, when Solar power plant was set-up, the cost per MW was approx Rs. 6.5 - 7 crores/MW which is much higher than current cost of Rs. 4.50 crore/MW. Thus, expecting old projects to be assessed at current rates and thereby taking a significant loss is unjustified.

REC based Solar power projects contribute approx 15% of total installations in India. The investments made for these projects were considering the project viability based on revenue realization from REC sale in the price band of INR 3,500-5,800 per REC. The project Capex per MW during 2011-12, 2012-13 & 2013-14 were approx. Rs 14Cr, Rs 10 Cr & Rs 7 Cr. respectively. Hence, reducing REC prices will have severe adverse effect on project viability for projects already commissioned in REC route and thus compelling the commissioned Solar projects to become NPA and the viability of existing projects will be endangered.

- **Prodigy Hydro Power Pvt. Ltd.** has submitted that there is a reduction in capital cost of solar projects, however the capital cost of Small Hydro Power (SHP) projects

is increasing and the present capital cost is more than Rs 10 crores/MW. They recommend a separate RPO for SHP Projects and increase in REC price commensurate with increase in capital cost.

- **Power and Energy Consultants , Saidpur Jute Co. Ltd`, Triveni Sangam Holdings & Trading Co. Pvt Ltd, New Patel Saw Mill, New Patel Saw Mill, Dr. DH Patel, Patel Wood Syndicate, Govindram Shobhram & Co., Agrawal Minerals (Goa) Pvt Ltd, Suma Shilp Limited, Daksha Infrastructure Pvt. Ltd., Gangadhar Narsinghdas Agrawal Saraswati Industries** have commented that a huge number of RECs are lying unsold with developers, the prices of RECs issued prior to 31.03.2017 will also reduce and this will result in to companies going under NPA due to non-payment.
- **Shri S P Garg** suggested that if the proposed pricing mechanism is implemented w.e.f. April 01, 2017; instead of providing for a vintage multiplier especially for Non-Solar technologies (as they have been kept at constant prices since the 2011 Order by Commission) allow them to be traded along with Solar RECs which are issued till March 31, 2017 at existing level of Forbearance and Floor prices. The proposed prices shall be applicable for REC projects registered and RECs issued from 01.04.2017 onwards.

Analysis & Decision

10. Many stakeholders have objected to the loss of value of existing inventory. Losses to the tune of INR 1866 crores have been estimated. They have highlighted that the benefit of the price reduction will primarily go to those obligated entities that have not followed the requirement of law so far and have not fulfilled their RPO obligations.

Few stakeholders have also suggested that this floor price should be applicable to future inventory only. Alternatively, others have suggested to protect the value of the inventory of RECs accumulated by the RE projects by providing an appropriate vintage multiplier on the inventory. Some generators have argued that they are unable to recover a component of their tariff and have also lost earnings by way of interest on such money, while those RE generators that have PPAs are able to recover full RoE as well. Many developers have pleaded that their projects will become unviable.

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

Month, Year	Opening Balance	RECs Redeemed	%age Redemption of RECs wrt Monthly Opening Balance
April, 2016	165,91,968	3,16,110	1.91%
May, 2016	165,90,757	1,81,941	1.10%
June, 2016	170,66,299	4,68,441	2.74%

July, 2016	171,04,540	2,72,980	1.60%	184
August, 2016	169,57,554	2,98,869	1.76%	
September, 2016	167,39,712	2,07,249	1.24%	
October, 2016	171,60,163	2,90,929	1.70%	
November, 2016	172,60,009	3,02,886	1.75%	
December, 2016	182,45,881	4,54,038	2.49%	
January, 2017	185,84,063	15,68,192	8.44%	
February, 2017	176,57,449	10,93,779	6.19%	

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

13. In this context, the Commission had specified in Regulation 9(1) of Central Electricity Regulatory Commission (Terms and Conditions for Recognition and Issuance of Renewable Energy Certificate for Renewable Energy Generation) Regulations, 2010, hereafter referred to as 'REC Regulations' that the floor and forbearance price would be determined from time to time. The said regulation is extracted as under:

“The price of Certificate shall be as discovered in the Power Exchange:

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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.”

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

II. Computation of Solar and Non-Solar Forbearance and Floor Price

Commission's Proposal

- To summarize, proposed principles for computation of forbearance and floor price are as follows:

Forbearance Price: The forbearance price has been derived based on the highest difference between cost of generation of RE Technologies / RE tariff and the average power purchase cost of 2015-16 for the respective states.

Floor Price: The floor price has been determined keeping in view the basic minimum requirements for ensuring the viability of RE projects set up to meet the RE targets. This viability requirement has been observed as approx. 70% of the levellised tariff prescribed for each non solar RE technology or 70% of average bid discovered tariff for solar auctions.

Stakeholder Comments

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

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Pursuant to the Fourth Amendment in REC Regulations, the Central Agency had informed the RE generators to submit revised declarations and check-list of concerned State Agencies. As on 20.03.2017, Central Agency has received details of 839 RE Generators under REC mechanism out of which 89 projects were ineligible as per amendments in REC Regulations. Details of 338 RE projects are yet to be received from State Agency.

87 projects have been revoked and remaining 2 are under process of revocation. The detailed matrix of registered projects is as follows.

S. No.	Source	No. of Projects	Registered Capacity	%age Capacity Share
1	Wind	559	2,306	52.52
2	Solar PV	353	720	16.40
3	Small Hydro	32	252	5.74
4	Biomass	65	583	13.28
5	Bio fuel cogeneration	77	529	12.05
6	Bio Gas	1	2	0.05
	TOTAL	1,087	4,391	

Based on the above, the weighted average forbearance and floor price for Non-Solar REC calculated on the basis of registered capacity may likely change.

- **Mytrah Energy (India) Pvt. Ltd.** has submitted a similar matrix of projects registered under REC framework as on 20.03.2017
- **MSEDCL** has submitted that the reduction in Forbearance and Floor Price is a right move considering the sharp fall in the prices for RE technologies. The proposed REC price is in line with the current RE technology market trend. It shall give a boost to Discoms, obligated entities to fulfil the RPO requirement and reduce the financial burden. Further it shall reduce the power procurement cost of the Discom which will get passes on to the consumers in form of lower tariff.
- **Vedanta Limited** has submitted that it is imperative that the reduction in prices of solar and non-solar generation equipment be passed on to the consumer in a timely manner and the Draft Order is in line with such principle. They have submitted views on the methodology for calculation of Solar and Non-Solar REC Price.

For Computation of Technology Specific Floor Price (for Non-Solar Technologies), Minimum of (Project Viability Tariff – APPC) should be considered instead of Maximum of (Project Viability Tariff – APPC)

Similarly for Computation of Solar REC Floor Price, Minimum of (Project Viability Tariff – APPC) should be considered instead of Maximum of (Project Viability Tariff – APPC).

Based on the calculations using the above assumptions and taking average of all scenarios for computing the Non-Solar and Solar REC Price, the floor price of Solar and Non-Solar REC should be made zero. It is submitted that this move shall attract more number of utilities and other eligible entities to participate in the market actively. The floor price may be hampering the liquidity and cash flow for many RE generators at lower price than Floor price subject to the volume of RECs comparing to present scenario where REC is sold on pro-rata basis at floor price.

- **REConnect Energy Solutions Pvt. Ltd., Rane TRW Steering Systems Pvt Ltd ,AA Energy Ltd., Bansal Wind Mill Pvt. Ltd., Bonafide Himachalies Hydro Power Developers Association, Sri Sivajothi Spinning Mills (P) Ltd., Fab Colors, Baroda Moulds & Dies, Electrical Controls & Systems, Kaizen Switchgear Products, Kasturi & Sons Ltd., SRG Apparels Pvt. Ltd., Karur K.C.P Packagings Ltd., Manidhari Gums & Chemicals, The KCP Limited, ETA Power Gen Pvt. Ltd., UP Sugar Mills Cogen Association, Armstrong Power Systems Pvt. Ltd., Naga Limited, Sanjiv Prakashan, Kasturi Estates Pvt. Ltd.** have appreciated that a detailed description and data of the method followed to determine the floor and forbearance price has been provided.

They have submitted that Solar prices discovered in reverse auctions need to be carefully differentiated as these include several projects which have different terms and conditions attached. For example, the REWA Ultra Mega Solar Park has been provided a guarantee by the State government. Further, the land and evacuation infrastructure will be provided by the State in this project. This alters the risk profile of a project significantly, resulting in prices that may not reflect the actual market price

of Solar power. Such projects should not be considered when calculating the average tariffs for REC price determination.

They have suggested that Non-Solar REC price determination should not include data from single wind bidding. While in the case of Solar, several bid prices are available, in the case of wind only one bid has taken place, and that too just last week. As a result, wind price determination may not be representative as it is based on a single bid data.

They have suggested that Solar REC price determination should only include prices from projects that received no State guarantees or incentives to enable a better comparison.

- **Prayas Energy Group** has submitted that in terms of methodology and data used in these calculations, the APPC used is for the year 2015-16, while projects under the revised mechanism would be become operational in 2017-18 and beyond. Even while APPC data for 2017-18 is certainly not available, it could have been estimated based on past growth rates. This would further reduce the proposed floor and forbearance prices.

They have also submitted that section 4.1.2 of the Draft Order notes that “The Commission, however, directs the staff to examine the need of determining the floor price of REC and whether going forward the floor price can be removed”. Hence it is amply clear that there is still further downward pressure on floor prices.

No concrete reasons are given for choosing Non-Solar REC prices as per scenario 1 vs those in scenario 2 (which has more realistic wind prices discovered through competitive bidding). If one were to go with the more likely second scenario, forbearance and floor price for Non-Solar RECs would be Rs 1.9/kWh and Rs 0.4/kWh respectively. In fact even with this much lower floor, if one were to put up wind power projects at prices close to the bid price of Rs 3.46/kWh, the whole basis for the floor price is taken away.

- **Adani Green Energy Limited** has suggested that Average bid tariff of Rs. 4.65/kWh does not correct for VGF in SECI bids tariff. Base tariff of Rs. 4.43 per unit has been considered for calculation. Average bid tariff is determined based on tariff determined through competitive bidding in RE rich States i.e. UP, Rajasthan, Maharashtra, AP, CG, KA, Jh, TLG & RUMS. Average tariff in RE rich State (9 States) is not representative of Average Solar tariff of the nation. Solar tariff in each State shall be considered instead of few States. Last bid or SERC Solar tariff shall be considered in case competitive bidding in current year is not available. Bid results of all the tenders are not considered.

They have requested to re-determine the Forbearance and Floor Price based on above suggested parameters. In addition, In addition they have submitted that Floor & Forbearance price in each State shall be determined based on the difference between respective Solar tariff (Bid tariff or SERC tariff) and APPC of respective States, instead of difference between average Solar tariff of current RE bids in few States and APPC.

- **IWTMA and InWEA** have requested to keep the floor price of Non-Solar RECs at the present level of Rs 1500 per REC at-least for a period till 2020 in order to allow the REC market to take off and achieve the stated objectives of the mechanism.

They have also submitted that removal of floor price would adversely impact the bankability of REC projects. Already investors have low interest in the REC based projects (only 9% of total RE Installed capacity registered under REC), year on year registration of wind projects with REC are also falling down and removal of floor price would not be prudent as floor price ensures certainty of returns to the investors, without any floor price, the return would be difficult to quantify, making it difficult to secure loans for the project.

It is submitted that the Forbearance Price of RECs should be prescribed as the penalty amount or separate fund to be created by defaulting obligated entity is linked to the forbearance price. Thus in order to operationalize this provision of the RPO-REC Regulations, there is a need that forbearance price exist. Further, this would be more relevant in the context of stringent RPO enforcement expected from SERCs through operationalizing such provisions of the respective State RPO-REC Regulations.

The data on REC Projects (MW Capacity share, Number of Projects) is required to be updated as the data available on the REC Registry Website as on date is different which is required to be factored in at the time of finalisation of the Order.

- **Himachal Small Hydro Power Association** has requested not to reduce the floor price and maintain the same at Rupees 1500 / REC for Non-Solar projects.

- **IL&FS** has commented that decreasing the price of RECs shall impact the financial viability of such projects.
- **L&T** has commented that in Appendix -1 Clause 1 B, For Solar, the SECI bids mentioned in the table are VGF based, hence the calculation of weighted tariff calculation should be done after adding the portion of VGF effect on fixed tariff of Rs 4.43. It is suggested that every Rs 1 Lac VGF increases the tariff to approx. Rs 0.93 Paise. Hence, corresponding changes to be incorporated.
- **GAIL** has commented the proposed reduction of Non-Solar REC Floor price Rs 1000/- will severely affect the envisaged return of the projects. Hence implementation with retrospective effect owing to existing REC inventory would not be a fair pricing mechanism. Further reducing the Floor price of REC will aggravate the situation, where the present REC inventory value and revenue from future REC sale will reduce by 33.33% and put the existing projects in distress, as already the cash flows are stuck up due to delayed payment by DISCOMs and even due to non-receipt of the interest on delayed payment. These projects have already been suffering from problem of backing down during peak generation seasons. On the other part, this will give the undue advantage to the entities that are not adhering to the RPO compliance, which needs to be discouraged for sustainable renewable power economy.

It has also been suggested to keep the Floor Price for both Solar & Non-Solar Segment to protect the returns / investment in renewable energy sector.

- **Captive Power Producers Association** has submitted that for Non-Solar Floor price, in case of small hydro and Wind except one State, all other States have negative price difference between Project Viability Tariff and APPC cost, whereas for Biomass and biofuel many States representing large portion of the specific technology have difference above floor price. Technology wise weighted average Floor price for small hydro and wind under both scenarios 1 and 2 works out to be less than Rs.0.50/kWh.

The proposed floor price of Rs 1000/- favours Wind (58%) and Small Hydro Generators (6.15%) who will earn additional income over and above specified in the tariff guidelines above project viability requirement at the cost of REC buyers (RPO obligators) and at the same time other technologies are getting discouraged to opt for REC mechanism. It is requested to consider a vintage multiplier for such cases and reduce the floor price to below Rs1000/MWh which can be calculated considering the State-wise accredited capacity of REC for Wind and Hydro projects.

It is also suggested to reconsider further reduction of Solar REC Floor price to less than Rs.1000/MW.

- **Rays Power Experts Pvt. Ltd** has commented that it must be considered that projects under REC Mechanism are mostly <10 MW so project cost is high and limited facility provided by State Governments before finalizing REC prices for Solar Projects we have to consider this thing and keep Solar REC prices on higher side as compare with Wind Project.

RPO set by every State increases on yearly by respective SERC's in their respective orders but there is no increase in demand of REC clearing ratio so backlog of non-traded REC increases continuously on yearly basis.

- **Sir Kasturchand Daga Solaire Inc** commented that in addition to the factors listed out in the Principal Regulation 9 for determination of "Pricing of Certificate", should also look into the market condition of REC's transactions. This is of importance in order to implement Government policy and intent in its true spirit. REC is one of the instruments to generate revenue which is not in addition to any other source of revenue but is necessary to ensure a minimum support earning. Keeping in view the trends of percentage clearance in each trading cycle any downward revision in floor price shall shake belief of small investor like me. It may also be noted that Floor and Forbearance price determination and factors listed in Regulation 9 assumes that a perfect market would influence the pricing. However, no such perfect market is there in REC trading and therefore, including REC NON-LIQUIDITY as a relevant factor while deciding the floor and forbearance price of certificates is of utmost importance.
- **Sai Saburi Urja Pvt. Ltd.** has requested to increase the existing stock by a factor of 3.50 to equate the proposal to bring down the floor price from Rs 3. 50 to Rs 1 /unit and continue it for next three financial years. The company has also submitted that they lack funds and will be declared NPA due to failure on part of Government of India to liquidate REC. They have requested to have this provision for at least 2017-18, 2018-19 and 2019-20.

- **Power and Energy Consultants** has submitted that in calculation of the tariff in Annexure 1-A, the tariff of seven wind stations should only be considered and States like J&K, Manipur and Mizoram should not be considered. Also, in case of Maharashtra, the rates considered are for zone -4, however most of the wind projects are coming only in zone-2 and therefore tariff of zone-2 should be considered.
- **Bajaj Finserv Limited** has submitted that 2nd largest wind installations under REC mechanism are installed in Maharashtra (Capacity 562.75 MW). All projects are registered for sale under third party and no projects is registered under sale of RE to Discom at APPC as MSEDCL is not purchasing wind energy at APPPC rate. Therefore, the consideration of APPC rate for computation of forbearance and floor price of REC is contradictory.

They have also submitted that MERC has increased the cross subsidy surcharge and imposed additional surcharge on OA transactions of RE which has resulted in 4 times increase in OA Tariff

Further, Govt. of Maharashtra has given tariff concession to industrial consumers (restricted to those consumers who are not using open access power) situated in major part of Maharashtra such as Vidharbha and Marathwada for 3 years from Q2 FY 2017-18. Existing OA consumers have stopped use of contracted RE to avail the concession offered by the Govt.

Accumulated RECs for some generators will start lapsing from April 2017 onwards which shall give an additional impact. They have requested to consider the difficulties mentioned above before reducing the floor price of REC.

- **Apeiron Renewable Energy Pvt. Ltd.** has stated that during last two years the Central Government to bring prices of power generated through Solar power down have proposed to providing Viability gap funding / performance incentive. This performance incentive going presently is 1.875 crore per MW DC it was Rs. 2.2 crore few months back. This is 33% cost of setting up Solar power plant per MW DC as per CERC own calculations and benchmark cost suggested by CERC for last year. The discounted value of this incentive is Rs 1.87 per unit of expected generation . Hence the appropriate base price, based on already undertaken tender process is suggested price + discounted value of Incentive which is $1.03 + 1.87 = \text{Rs } 2$.
- **SB Solar Services Pvt. Ltd.** has submitted that the proposed Solar REC Floor price is arrived at based on tariffs identified in recent bids. Many of the bids were awarded under NSM by SECI with VGF to the tune of Rs 10 mn /MW. The VGF quantum has been ignored. In addition many of the bids were awarded under NSM by SECI/NTPC with better credit rating than Discoms and the tariff discovered is discounted for all these factors. The bids awarded under State schemes and outside the Solar parks have higher tariffs, hence fixing a uniform Solar REC price for all projects is not advisable
- **Ginni Global Pvt. Ltd.** has submitted that Floor Price is the difference between Minimum Project Viability Requirement and APPC rate.

Projects, opting for REC Mechanism, need to incur following additional expenses

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i. Issuing and selling cost of REC

ii. Holding cost of REC (presently holding period of REC is 24-30 months)

iii. Price fluctuation risk

They have suggested that cost of issuing & selling REC, holding cost of REC and some contingency may be factored into the Floor price to make REC Mechanism a viable option

In addition, they have also submitted that the Forbearance Price has been calculated as the difference between SERC tariff and APPC price. In this respect, it is submitted that main purpose of REC mechanism was to provide viable tariff to renewable Energy projects as levellised tariff, being fixed by SERC were generally not found viable, as SERC usually did not factor actual capital cost & O&M expenses in tariff calculation. Further, any capital cost incurred, subsequent to the implementation of the project, is also not being considered in fixing levellised tariff.

Therefore, keeping the forbearance price equal to levellised tariff - APPC cost will kill the REC mechanism and there will be no incentive for projects for opting REC mechanism where REC sale remain uncertain.

They have suggested that Forbearance Price should be higher than the difference between levellised tariff - APPC cost so that project may get viable tariff.

- **Ranga Raju Warehousing Pvt. Ltd. / Greenko Group** has submitted that the data provided in the aforesaid order for determination of technology specific Floor price for Small Hydro Power projects suggests that except for one State (Madhya Pradesh) the determined minimum project viability tariff is lesser than the APPC for the respective State. It suggests that either the minimum Project Viability Tariff determination does not provide an appropriate representation of Small Hydro project viability or the determined SERC generic tariff is does not provide for optimal risk adjusted return on equity invested in the Small hydro project. This is also reflected in the continuously declining trend in small hydro capacity addition in the country over the last 5-6 years.

They have requested that REC for Small hydro projects should be determined only at Forbearance Price level in order to ensure future investment in Small hydro sector.

- **Klassic Wheels Pvt. Ltd., Giriraj Enterprises, Uma Corporation, Gaurav Agro Pipes, Bothara Agro Equipments Pvt. Ltd., Paras PVC Pipes & Fittings Pvt. Ltd., Saidpur Jute Co. Ltd, Triveni Sangam Holdings & Trading Co. Pvt Ltd, Triveni Sangam Holdings & Trading Co. Pvt Ltd, New Patel Saw Mill, New Patel Saw Mill, Dr. DH Patel, Suma Shilp Limited, Daksha Infrastructure Pvt. Ltd., Patel Wood Syndicate, Govindram Shobhram & Co., Agrawal Minerals (Goa) Pvt Ltd, Gangadhar Narsinghdas Agrawal Saraswati Industries Pooja Renewable Energy Pvt. Ltd., Kasturi Foundry Pvt. Ltd. and Advik Hitech Pvt. Ltd.** have submitted that the following factors are critical for the operation of their plants registered under REC Mechanism and request them to be considered while determining the Forbearance and Floor Price.

The Investment made for this project was considering the project viability based on revenue realisation from captive/Third party sale adjustment & REC sale. We would like to inform you that in State of Maharashtra due to strict guidelines implemented by MSEDCL for Captive / OA such as :-

- 1.15 Min time block adjustment similar to conventional power trading across India despite Solar being Renewable power project
- 2.Reduction in contract demand to the extent of PLF penalty at temporary tariff
- 3.100% Cross subsidy for OA Third Party Sale
- 4.Highest OA charges & losses. Hence, reducing the floor price the eligibility of Solar power projects for REC will have a severe adverse effect on project viability and thus our project shall become Non Performing Asset (NPA).

Following Risk factors in State of Maharashtra are not considered:-

1. Demand Penalty @ Rs. 330/KVA & Rs.15 /unit is applicable due to effect of Contract demand reduction.
2. Maximum demand penalty (2 Times of wheeling charges)
3. Unit consumption at temporary tariff if unit consumed beyond contract demand.
4. Levy of Regulatory charges Viz. Electricity duty, Additional surcharges, Tax on Sale.
5. Energy accounting in 15 Min time slot leads to remain more units unadjusted.

They have requested to look into the facts & figures and do not reduce the floor prices for those companies who have invested post launch of REC implementation and not enjoying any sort of concessional benefits.

- **Lohia Developers India Pvt. Ltd., Lohia Gramin Vikas Pvt. Ltd. and DesignCo** have submitted that the tariff is taken from installations at Solar park by the government which has:
 - a. Nil Land Cost and
 - b. Nil power Evacuation Cost.
 - c. Apart from this other facilities like assured power off take.
 - d. No wheeling and transmission charges and losses.

Whereas all other plants including those under REC mechanism have these components and cost built-up in them. If the cost of land and transmission is added as per the calculations of CERC itself it will have a material impact on the tariff per KWh.

- **Green Energy Association** have submitted that in using the SERC Tariff and MNRE Bid discovered tariff for computation of Forbearance and Floor Price, certain factors need to be considered

The average project size per bidder is 75 MW per Bidder whereas under REC mechanism average project size is 2 MW per project.

On adding the cost of land and transmission as per the calculations, it will have an impact of Rs.0.52 per KWh on the tariff. It will be Rs 5.17 instead of Rs 4.65 as in the proposed order.

On using the CERC benchmark Tariff for Solar PV for FY 16-17 i.e. Rs 5.68, the floor price of the Solar RECs derived using both the scenarios shall be between Re.1 to Rs.2 which should be close to Rs.1.5 per KWh. (relevant computations have been submitted)

- **Hindalco Industries (Aditya Birla Group)** have submitted that the average of Scenario 1 & 2 (all technologies) used in the computations for Non-Solar REC Price leads to Forbearance and Floor Price of Rs 2.40 and Rs 0.71 per kWh basis respectively

Small Hydro, Biomass and Biofuel co-generation projects are relatively less infirm in nature compared to wind. It is unlikely that the developers of Hydro, Biomass, Biofuel co-generation had undertaken the projects on the basis of REC benefit. Further, there is no reason why an obligated entity should bear the cost of an inefficient technology. The REC prices in this category should be derived based on Wind project only.

They have also submitted that States without Solar Projects / viability should not be considered in the computation of Solar REC Prices. In place of using arithmetic average, weighted average of existing Solar capacity under REC framework should be used.

	Forbearance Price	Floor Price
Non Solar	600	200
Solar	1500	500

- IWPA and Shri S.P. Garg** commented that the earlier approach of considering tariffs based on CERC RE Tariff Regulations for the sake of uniformity and consistency. While computing RE tariff, the different SERC use different parameters, methodology and therefore might not work in case of a national level mechanism like REC. It has also been pointed out that the targets set under NAPCC have not been considered although these targets were part of the earlier methodology for determination of REC prices.
- Ranga Raju Warehousing Pvt. Ltd. / Greenko Group** have submitted the following

		2014	2015	2016
Solar	REC offered (Nos)	19,64,592	1,88,74,807	2,81,23,532
	REC cleared (Nos)	24,444	3,70,574	3,98,094
	REC clearance %	1.2%	2.0%	1.4%
	REC traded at floor price (%)	100%	100%	100%
Non-Solar	REC offered (Nos)	4,47,34,718	8,56,36,055	9,16,52,179
	REC cleared (Nos)	10,46,397	26,93,510	25,75,976
	REC clearance %	2.3%	3.1%	2.8%
	REC traded at floor price (%)	100%	100%	100%

Only a fraction of RECs offered are being off-taken at exchanges and also RECs are traded only at the Floor Price at the exchange ever since the advent of REC trading, the revenue receipt from sale of RECs at the exchange have fallen short of ensuring at-least recovery of minimum project viability tariff for RE projects under the REC mechanism. Thus, as has been highlighted in the draft order itself to examine the need for floor price of REC, it is requested that determination of Floor Price of REC may be discontinued and only the Forbearance Price of REC may be determined and issued going forward.

Analysis & Decision

15. The Commission would like to clarify that the State level APPCs used in the proposed computation were taken from the Tariff Orders of SERCs for FY 2015-16. However, the exercise of determining floor and forbearance prices has now been revised, with reference to APPCs of all States for FY 2016-17. This is in alignment with the definition in Regulation 5(c) of REC Regulations:

“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.”

16. POSOCO has commented that the technology mix of registered projects has changed. The Commission takes note and has used the latest data as available. The detailed break-up of the capacity and number of projects registered is as under:

Technology	No. of Projects	Capacity (MW)	%age Capacity share
Small Hydro	32	252	6.70%
Biomass	65	583	15.49%
Biofuel Cogeneration	77	529	14.06%
Wind	560	2399	63.75%
Total Capacity	734	3763	

Source: REC Registry (as on 23.03.2017)

17. IWPA has commented that the earlier approach of considering tariffs based on CERC RE Tariff Regulations should be used for the sake of uniformity and consistency. The Commission clarifies that the REC Regulations provide for incorporating state level variations, as the developers would compare the total revenue under REC framework vis-à-vis the FIT prevalent in the respective state.

Particularly, Regulation 9(2) clause (a) and (b) are as below:

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

(a) Variation in cost of generation of different renewable energy technologies falling under solar and non - solar category, across States in the country:

(b) Variation in the Pooled Cost of Purchase across States in the country;”

Computation of Non Solar Forbearance and Floor Price

18. Several stakeholders have objected to the computation that includes single bid tariff for wind. It should be appreciated that this particular calculation has not been used for arriving at the floor price. But it illustrates that wind tariffs are expected to decrease over the next couple of years.

19. Secondly, it has also been commented that upcoming wind projects are expected to be at lower CUF sites, as high resource sites have been utilized. Therefore, the tariff considered should account for lower CUF zone. The Commission is not convinced with the argument in the impending era of tariffs discovered under reverse auctions. Moreover, with trend of use of higher hub height, larger rotor size, and advancement in technology etc, the cost of generation in lower wind zones is not expected to be higher any more. Rather, the cost could decline because of improved CUF.

20. In so far as REC forbearance and floor prices for wind are concerned, an analysis has been undertaken for 9 wind-rich states. Tariffs of multiple CUF zones have been averaged out for the States where they are available. As wind capacity has major share of non-solar REC project capacity, this translates to weighted average floor price of Rs.1.14/unit.

Additionally, SHP tariffs for both <5 MW projects and 5-25 MW projects have been considered, and an average tariff number has been used.

Detailed computations may be found in Annexure 1A.

1A: Technology specific prices (based on Tariff Orders by SERCs) (in Rs/kWh), average wind tariff				
	SHP	Biomass	Bagasse	Wind
Technology Specific Forbearance Price	3.50	4.64	3.46	2.51
Technology Specific Floor Price	1.60	2.18	1.58	0.74

1A: Capacity weighted non-solar forbearance and floor price, average wind tariff					
Technology	No. of Projects	Capacity	%age Capacity share	Weighted Average Forbearance Price (Rs/kWh)	Weighted Average Floor Price (Rs/kWh)
Small Hydro	32	252	6.70%	0.23	0.11
Biomass	65	583	15.49%	0.72	0.34
Biofuel Cogeneration	77	529	14.06%	0.49	0.22
Wind	560	2399	63.75%	1.60	0.47
Total Capacity	734	3763		3.04	1.14

21. It is evident from the analyses above that floor price for wind projects has already gone below Re1 mark.

In fact, if in place of SERCs tariff for wind, the recently discovered bid tariff is considered as a case in point, the floor price for wind projects goes negative, thereby pushing the weighted floor price even below Rs.0.50 (Annexure 1B).

1B: Technology specific prices (based on Tariff Orders by SERCs): bid discovered tariff for Wind				
	SHP	Biomass	Bagasse	Wind
Technology Specific Forbearance Price	3.50	4.64	3.46	0.64
Technology Specific Floor Price	1.60	2.18	1.58	-0.40

1B: Capacity weighted non-solar forbearance and floor price, bid discovered tariff for Wind					
Technology	No. of Projects	Capacity	%age Capacity share	Weighted Average Forbearance Price (Rs/kWh)	Weighted Average Floor Price (Rs/kWh)
Small Hydro	32	252	6.70%	0.23	0.11
Biomass	65	583	15.49%	0.72	0.34
Biofuel Cogeneration	77	529	14.06%	0.49	0.22
Wind	560	2399	63.75%	0.41	-0.26
Total Capacity	734	3763		1.85	0.41

22. Thus, the Commission feels that the proposed floor price of Rs.1000/MWh presumes the correct ground realities and price trends. Consequently, the floor and forbearance price of non-solar RECs starting 01.04.2017 shall be as follows:

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

Computation of Solar Forbearance and Floor Price

23. It has been highlighted by stakeholders that for computation of solar REC prices, Viability Gap Funding (VGF) has not been considered, as the bid tariff excludes that component. Translating a VGF component into impact on tariff depends on financial

assumptions of the bidder. The average bid tariff discovered in auctions from the period January 2016 to February 2017 has been Rs 4.65/kWh:

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Auction	Year	Capacity on Offer (MW)	Highest Bid (Rs./KWh)	Lowest Bid (Rs./KWh)	Weighted Avg. Price (Rs./KWh)
Rajasthan-420 MW Bundling	Jan'2016	420	4.36	4.34	4.351
UP-100 MW Bundling	Jan'2016	100	4.78	4.78	4.78
Rajasthan-100 MW Bundling (DCR)	March'16	100	5.07	5.06	5.068
Telangana-50 MW Bundling (DCR)	March'16	50	5.19	5.19	5.19
Jharkhand-200	March'16	102	5.59	5.2	5.464
Jharkhand-1000	March'16	999	5.48	5.08	5.356
Telangana-350 MW Bundling	May'16	350	4.67	4.66	4.667
Karnataka-500 MW Bundling	May'16	500	4.8	4.78	4.79
MH-50 MW (VGF-DCR) [§]	June'16	50	4.43	4.43	4.43
AP-400 MW(VGF) ^{§§}	June'16	400	4.43	4.43	4.43
Karnataka-920 MW(VGF) ^{§§§}	June'16	920	4.43	4.43	4.43
Karnataka-50 MW(VGF-DCR) ^{§§§§}	June'16	50	4.43	4.43	4.43
CG-100(VGF) ^{§§§§§}	June'16	50	4.43	4.43	4.43
REWA Ultra Mega Solar Park [#]	Feb' 17	750	2.979	2.97	3.30
<u>AVERAGE</u>					4.65

* Results for the lowest bid for 500 and 1500 MW respectively

[§] Highest VGF required is 130 Lacs/MW with weighted average VGF is 91.14 Lacs

\$\$ Highest VGF required is 74.49 Lacs/MW with weighted average VGF is 59.56 Lacs

\$\$\$ Highest VGF required is 73.5 Lacs/MW with weighted average VGF is 72.3 Lacs

\$\$\$\$ Highest VGF required is 130 Lacs/MW with weighted average VGF is 130 Lacs

\$\$\$\$\$ Highest VGF required is 59 Lacs/MW with weighted average VGF is 59 Lacs

Escalation of 5 paise per unit every year till first 15 years, Levellised tariff Rs 3.30/unit

Source: Ministry of New and Renewable Energy

The table above is an indicator of future trends, as the cost of generation is expected to be more in line with recently discovered tariffs, or reduce further.

24. The Commission has examined the viability of solar projects in 17 states, by comparing the average bid tariff (as determined above) with the respective state APPC.

Accordingly, the states may be classified into various ranges of forbearance and floor price as in the table below.

State	APPC (2016-17) as estimated based on SERC Tariff Orders for 2016-17 (Rs/kWh)	Bid Discovered Tariff for Solar Project based on MNRE Data (Jan 2016 till Date) (Rs/kWh)	Difference b/w Bid Discovered Tariff and APPC (Rs/kWh)	Project Viability Tariff based on Bid Discovered Tariff (Rs/kWh)	Difference b/w Project Viability Tariff and APPC (Rs/kWh)
Andhra Pradesh	3.61	4.65	1.04	3.26	-0.36
Arunachal Pradesh	3.20	4.65	1.45	3.26	0.05
Chhattisgarh	2.80	4.65	1.85	3.26	0.46
Gujarat*	3.39	4.65	1.26	3.26	-0.14
Haryana	3.59	4.65	1.06	3.26	0.34
Himachal Pradesh	2.29	4.65	2.36	3.26	0.97
Karnataka	3.23	4.65	1.42	3.26	0.02

Kerala #	2.99	4.65	1.66	3.26	210 ^{0.27} 0.44 -0.31 -0.31 -0.14 -0.30 -0.63 -0.53 0.63 -0.37
Madhya Pradesh	2.82	4.65	1.83	3.26	
Maharashtra*	3.56	4.65	1.09	3.26	
Punjab	3.56	4.65	1.09	3.26	
Rajasthan \$#	3.39	4.65	1.26	3.26	
Tamil Nadu #	3.55	4.65	1.10	3.26	
Telangana	3.88	4.65	0.77	3.26	
Uttar Pradesh	3.78	4.65	0.87	3.26	
Uttarakhand	2.63	4.65	2.02	3.26	
West Bengal	3.62	4.65	1.03	3.26	

Determination of Forbearance Price

Price Range (Rs /kWh)	No. of States	% of States
< 1	2	11.8%
1 - 2	13	76.5%
Above 2	2	11.8%

Determination of Floor Price

Price Range (Rs/kWh)	No. of States	% of States
< 1	17	100%
1 - 2	0	0.0%
Above 2	0	0.0%

APPC Data

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

TERC, TNERC Tariff Order issued in 2014-15, escalated at 6%

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

This analysis yields a floor price of Rs.0.97/unit and a forbearance price of Rs.2.36/unit. These numbers are rounded off to yield Rs.1000/MWh and Rs.2400/MWh respectively.

25. To sum up, the Commission notifies the following forbearance and floor price for solar certificates, effective from 01.04.2017:

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

26. This approach for floor price is considered necessary given the current state of demand supply of REC market. The Commission, however, directs the staff to examine the need of determining the floor price of REC and whether going forward the floor price can be removed.

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III. Vintage Multiplier

Commission's Proposal

- No vintage multiplier has been proposed for any technology and the existing vintage multiplier for solar generating technologies registered in REC framework prior to 01.01.2015 shall expire after 31.03.2017.

Stakeholder Comments

- **SJVN Limited** has requested that the provision of vintage multiplier as per the present regulation may be kept in the determination of forbearance and floor price of REC for projects registered under REC mechanism upto 31st March 2017. They have submitted that a 5 MW Solar PV Projects is being executed at Charanka Solar Park, Distt. Patan, Gujarat with a cost of more than Rs 6 crores /MW and has been registered under REC mechanism in the current financial year. With the revised forbearance and floor prices, vintage multiplier support is required to recover the cost of project.
- **Tata Power Company Limited and Oswal Woollen Mills Ltd. Nahar** has suggested that a onetime vintage multiplier may be provided to the unsold RECs available in the portal as on 1st April 2017. Thereafter no vintage multiplier shall be

available for the generation occurred post 31st March 2017. Currently, available RECs in the market are approximately 1.78 Crores including 47 lakh Solar RECs, therefore by revising the Floor price to Rs. 1000 per REC (from existing Rs. 3500 & Rs. 1,500 in case of Solar and Non-Solar) the viability of the projects will be severely affected.

- **Modi Group (Jai Mangal Infra Powers Pvt. Ltd.), Tirupati Microtech P.Ltd., Shri Giriraj Energy Pvt. Ltd., Omega Renk Bearings Pvt. Ltd., Laxmi Publications (P) Ltd., R.H. Prasad & Company Pvt. Ltd., Raj Overseas and Bharat Power Inc** have suggested that Vintage multiplier should be given for the backlog and valid RECs. Such vintage multiplier should be applicable for at-least next 5 years for project viability as REC sales have declined in last years and has resulted in a backlog of previous year RECs.
- **IL&FS** has requested that a vintage multiplier of minimum 1.5, as was provided to Solar projects while revision of Solar REC price was undertaken by the Commission, should be provided to the Non-Solar projects installed under APPC + REC mechanism and commissioned prior to 31.03.2017. It is submitted that APPCs of the State licensee's are expected to see a downward trend in view of the decreasing coal prices and procurements shall be majorly through competitive bidding, leading to lower cost of procurements.
- **Apeiron Renewable Energy Pvt. Ltd., Sir Kasturchand Daga Solaire Inc and Hasya Enterprises Pvt. Ltd.** has suggested that as the base prices of RECs are proposed to be changed, kindly ensure all REC in stock or to be applied for all the

power to be produced till 31st March 2017 and billed subsequently the numbers of REC are multiplied by a factor of Old Base price divided by new base price.

- **Indian Paper Manufacturer's Association** has submitted that in case the floor price is revised downwards from INR 1,500 to INR 1,000, then the number of unsold Non-Solar RECs should be revised upwards on a pro rata basis so that the book of accounts is not adversely impacted.
- **Klassic Wheels Pvt. Ltd., Giriraj Enterprises, Uma Corporation, Gaurav Agro Pipes, Bothara Agro Equipments Pvt. Ltd., Saidpur Jute Co. Ltd., Triveni Sangam Holdings & Trading Co. Pvt Ltd, New Patel Saw Mill, New Patel Saw Mill, Dr. DH Patel, Patel Wood Syndicate, Govindram Shobhram & Co., Agrawal Minerals (Goa) Pvt Ltd, Suma Shilp Limited, Daksha Infrastructure Pvt. Ltd. Gangadhar Narsinghdas Agrawal Saraswati Industries, Paras PVC Pipes & Fittings Pvt. Ltd., Pooja Renewable Energy Pvt. Ltd., Advik Hitech Pvt. Ltd. and Kasturi Foundry Pvt. Ltd.** has submitted that Vintage Multiplying factor to be continued after 31.03.2017 at 9.3 in order to ensure REC revenue realization considered at investment.
- **Ranga Raju Warehousing Pvt. Ltd. / Greenko Group** has submitted that since formulation of Solar and Non-Solar RECs Forbearance and Floor price, they have been trading at Floor Price at the power exchanges. Accordingly, the project developers consider the project floor price in revenue receipt from sale of RECs. The RE projects are under obligation to repay their term loans post COD of the project. A drastic reduction in Floor Price of RECs post Control Period would lead to economic unviability of RE projects during the control period under REC scheme.

They have requested to consider providing Vintage Multiplier to the projects developed during the control period for sustenance of forecasted REC revenue for at least 10 years post COD so as to enable RE developer service its obligation to repay its term loan. The Vintage Multiplier may consider the change in Floor price at the time of project COD and post COD.

- **Ujaas Energy Ltd.** has proposed that all Solar power plant under REC mechanism which are been commissioned before December 2014 should continue getting vintage multiplier of 2.66 for the REC generated from 1st April 2017 to March 31st 2019.

They have also requested to provide a multiplier for all the REC been generated till 31st March 2017 and remain unsold. The formula for Vintage multiplier is given as Rs 5800 (Current Forbearance Price)/New Floor Price.

- **Rays Power Experts Pvt. Ltd.** has requested to continue vintage factor for all projects on the basis of date of commissioning and similar formula will be used for calculation of vintage multiplier and applicable of vintage factor for at least five years from date of commissioning or date of registration. Some new projects are also in pipeline and these projects expected to be commission with in a time interval of 2-3 months. All these projects commercial viability based on current REC prices so please provide an extension of 3 months on existing REC prices or provide vintage multiplier based as per existing REC Certificate value.
- **Autobat Batteries Pvt Ltd.** has commented on the Principle of Estoppel of Promise, made by the Commission in the past, Revised Vintage Factor for Old Generating Plants which were commissioned before the issue of Revised REC Rates should be

provided, so that Old Plants which have made Heavy Investments in the Olden Days are do not suffer losses merely because of Failure of Obligated Entities' duty to buy their share of RPOs.

Also, legally, it is imperative to honour own committed Value of RECs in the past when old plants committed huge investments based on guaranteed REC values at that time. Otherwise, Old Plants will turn into NPAs (Non Performing Assets) and liability on Banks (Lenders). Old plants should be given Revised Vintage Factor as done in the past, along with Extended Validity of their Old / Unsold RECs. Thus, CERC order Dated 28/02/2017 needs revision by insertion of New Clause for REC Rates for Old Plants by providing once again Vintage Factor, ($9300 / 1000 = 9.3$ New Vintage Factor for Solar REC) as done in the past.

- **Alliance Land Developers Pvt. Ltd., Power and Energy Consultants and Rajasthan Patrika Pvt. Ltd.** have submitted that capital / Investment of installation of plants are decline rapidly in last two years whereas developers installed on or before 01/04/2015 were incurred more cost, therefore to compensate them and to maintain viability of the project, vintage advantage should be provided for the lifetime of the projects by the base rate of policy 2014 i e 9300 per REC. Also, it is requested to provide vintage advantage on the REC stock in hands as on 31/03/2017 to all developers.
- **Wind Independent Power Producers Association, Tata Power Trading Company Ltd, Green Energy Association** have submitted that has requested to introduce the concept of vintage multiplier for the REC remaining unsold and to be issued to the entities already registered. Introduction of vintage multiplier will ensure

smooth transition from the existing price range while securing the rights of the RE generators.

It is suggested to introduce the concept of vintage multiplier as follows:

I. Non Solar REC:

Vintage Multiplier = (Floor Price in the base year (FY 2012-13)/Proposed Floor Price)

$$= 1500/1000$$

II. Solar REC:

To secure the revenue rights associated with the REC certificates we request to adopt the vintage multiplier derived through the formula mentioned as below:

Vintage Multiplier = (Floor Price in the base year (FY 2014-15)/Proposed Floor Price)

$$= 3500/1000$$

The above mentioned vintage multiplier will be applied to all RECs remaining unsold and to be issued to the entities already registered under the scheme. Same will safeguard the revenue projections associated with such RECs and ensure a smooth transition to new price band.

- **Fluidcon Engineers, Apex Coco and Solar Energy Ltd** have sought for vintage multiplier.
- **Lohia Developers India Pvt. Ltd., Lohia Gramin Vikas Pvt. Ltd. and DesignCo** have submitted that as per proposal of CERC in the above order, no vintage multiplier has been proposed for any technology and the existing vintage multiplier

for Solar generating technologies registered in REC framework prior to 01.01.2015 shall expire after 31.03.2017. 217

In effect, this shall result the old RECs (high priced) to remain unsold thus making older projects unviable. We would like to draw your attention that as an investor we have invested in the project in FY 2013-14 on the basis of REC benefits (Rs. 9300 per REC) available to Solar power projects and at present value of inventory of our unsold REC is Rs. 8.30 crore. In case the above said order will be implemented, this will result in an immediate net loss of Rs. 8.30 crore (Rs. 3.32 crore/ MW). This will make the projects unviable.

While the effort to correct the dysfunctional market is commendable, the net result of the draft regulations is that the existing Solar investors will have to take a huge loss. This will create significant problems for existing investors, as they will struggle to meet their debt repayments, let alone get any return on their equity.

They have requested to prevent injustice of the REC developers for their accumulated RECs till 31-03-2017 by providing a multiplier of 9.3 for project setup before 31.12.2014 and multiplier of 3.5 for project setup on or after 01.01.2015.

In their case the minimum multiplier of 9.30 should be given to the projects for future REC as the project set-up in FY 2013-14 so that the value of 1 MWh of energy generated remains at Rs. 9,300.

Analysis & Decision

27. Several stakeholders have demanded extension of vintage multiplier for backlog of RECs, as well as for future RECs for projects that invested early on. IL&FS & WIPPA

have specifically suggested to provide a multiplier of 1.5 for non-solar RECs. Ujjas has suggested continuation of multiplier till March 31, 2019, at a value of 5.8 (current forbearance price/new floor price). Additionally, Autobat Batteries, Power & Energy Consultants, etc have said that unless a multiplier of 9.3 is provided to old projects, they will end up as NPAs.

28. The Commission has considered the suggestions and feels that if at this juncture, a multiplier is provided, there would be sudden surge in stock of RECs on the exchange and this shall imply that the existing inventory shall face even greater difficulty in getting cleared.
29. It is also understood that investing in a market comes with its own risks and the Commission believes that such risks are accounted for by investors. The Commission feels that the market must reflect the current ground realities.
30. The previously notified floor and forbearance prices for non-solar projects, vide Order dated 23rd August 2011, in the matter of Petition No. 142/2011 (Suo-Motu), were valid till end of control period, i.e. till 31st March 2017.

Clause 19 of the aforementioned order is extracted as under:

“19. The above stated forbearance and floor prices shall remain valid for the control period upto financial year 2016-17. “

31. At the time of providing the vintage multiplier for solar projects, vide Third Amendment to REC Regulations, the following clauses were added to Regulation 7:

“(7) The Commission shall determine through a separate order, the quantum of Certificate to be issued to the eligible entities being the solar generating companies registered under REC framework prior to 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 CCP) into the grid as per the following formula:

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$$\text{Vintage Multiplier} = \text{Floor Price of Base Year} / \text{Current Year Floor Price}$$

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 period from 1st January 2015 upto 31st March 2017, after which such projects shall be eligible for one REC for one megawatt hour of electricity generated.”

Additionally, in the Order on Petition No. SM/016/2014 (Suo Motu) on 30/12/2014, the Commission had clearly specified:

“The above vintage multiplier shall be provided to the solar generating companies registered under REC framework prior to the date of effect of the Third REC Amendment Regulations, for the period upto 31st March, 2017 after which such projects shall be eligible for one REC for one megawatt hour of electricity generated.”

32. Thus, discontinuation of vintage multiplier with effect from 1.4.2017 was statutorily provided. Hence the Commission has decided not to grant any multiplier to non-solar or solar RECs beyond 31.03.2017.

IV. Date of Applicability of new REC prices

Commission’s Proposal

	Non Solar REC (Rs/ MWh)	Solar REC (Rs/ MWh)
Forbearance Price	2,900	2,500
Floor Price	1,000	1,000

The above stated forbearance and floor prices shall be effective from 01.04.2017 and shall remain valid until further orders by the Commission.

- **Ginni Global Pvt. Ltd.** has submitted that most of the Projects, opting for REC Mechanism, have been able to sell only 50% of the REC and balance are still being held as inventory. To manage their Cash Flow, many Developers have taken finance on the security of the REC inventory. Banks have valued REC at Floor price for the purpose of calculating security value, for making available finance against the same. Any sudden drastic reduction in Floor price of REC will have following repercussions:-
 - i. Banks' Security will be affected and banks will demand immediate payment of unsecured amount
 - ii. Developers will have to take severe hit in their Annual Accounts which will affect their ability to mobilise funds for future expansion.

They have suggested that the Floor price may kindly be reduced after liquidation of REC inventory. Alternatively, Floor price can be reduced gradually.

- **ETA Power Gen Pvt. Ltd.** has submitted that majority of biomass projects have restructured their loan accounts based on REC revenue to show the viability statement to the banks and lenders to the projects. Most plants have recognised REC income in their financial statements and filings with Income Tax Department and Registrar of Companies.

The proposed reduction in price shall shrink the revenue of existing RECs and shall impact on financial statements already filed and may lead to tax implications.

Most plants in Tamil Nadu were closed since June 2015 mainly due to complete withdrawal of R&C measures and levy of very high cross subsidy charges. All the plants are waiting for positive regulatory developments and have been maintaining the plant only out of REC revenue with no operational revenue in place.

They have suggested that the revised pricing regulations should apply only for future upcoming projects and not for already existing and operational projects.

- **Continuum Wind Energy India** has requested to make revised floor price applicable for projects which are going to get commissioned after April 2017. The projects which are already commissioned and invested based on REC Floor price of Rs 1.50, if the floor price is amended downward to Rs 1.00 will severely impact the viability of such projects.
- **Wind Independent Power Producers Association** has commented that in case the revised price bands for REC certificates is made applicable only to the capacity getting registered under REC scheme on or after 01.04.2017, it will create an ambiguity in the market by introducing two products serving the common purpose but with different price ranges. Under such a scenario there will be two set of REC certificates in the market which are as follows:
 - I. Non-Solar REC price range 1,500 Rs./REC to 3,300 Rs./REC & Solar REC price range 3,500 Rs./REC to 5,800 Rs./REC.
 - II. Non-Solar REC price range 1,000 Rs./REC to 2,900 Rs./REC & Solar REC price range 1,000 Rs./REC to 2,500 Rs./REC.

As both the products will be used for common purpose of RPO compliance, the REC issued to entities registered on and after 01.04.2017 will be more demanded due to their lower price range. Such amendment in the REC price range will discriminate the existing REC over the newly issued REC, which will ultimately affect the financial viability of projects already registered in the scheme.

It is suggested therefore to have a common Floor and Forbearance price all the RECs certificates. It is also worth noting that adopting the proposed price range for all the RECs will result in huge revenue losses to the projects which are already registered in the scheme.

- **Autobat Batteries Pvt. Ltd.** has commented that for new plants coming up after 31/03/2017, it is suggested to revise and allow new REC rates effective 01/04/2017.
- **Sir Kasturchand Daga Solaire Inc** has commented as per the draft order, there is no clarity whether same will be applicable to all the RE Generators irrespective of their date of registration under the scheme or same will only be applicable to RE generators getting registration on and after 1st April 2017.

In case it is applicable to those generators who have been registered before the proposed date, it will make such generators cash flow so negative to the extent that they would not be able to pay even their debts leave alone recover their investment. Though the proposed floor price may be suitable for the generators getting commissioned and registered after 1st April 2017, same cannot be applied to the generators set up earlier.

Analysis & Decision

33. Several stakeholders have suggested that the new REC prices should be applicable to projects that will be registered after March 31st, 2017. However, that shall create two different types of RECs in the market, ones which are issued to projects registered before 1.04.2017 priced at Rs.3500 (Solar) and Rs.1500 (non-Solar), and to the newer projects at Rs.1000 (solar and non-solar). This juxtaposing of differently priced RECs will result in the more expensive RECs not getting sold. The futility of this measure has also been acknowledged by IWPA.
34. On the other hand, REConnect and several other developers suggested to split the market wherein the current outstanding RPO commitments may be met by older RECs only. This approach shall not be legally tenable for the Commission to undertake. All obligated entities are expected to take measures to comply with outstanding RPOs, which they shall undertake with the present inventory.
35. Thus, the revised floor prices (Rs.1000/MWh for solar and non-solar) shall be applicable to all RECs in the market.

V. Extension in Validity of RECs

Stakeholder Comments

- **Tata Power Company Limited, Himalaya Power Producers Association, DCM Shriram Industries Limited, Wind Independent Power Producers Association and Mytrah Energy (India) Pvt. Ltd. REConnect Energy Solutions Pvt. Ltd., Bonafide Himachalies Hydro Power Developers Association, Bansal Wind Mill Pvt. Ltd., Sri Sivajothi Spinning Mills (P) Ltd., Fab Colors, Baroda Moulds & Dies, Electrical Controls & Systems, Kaizen Switchgear Products, Kasturi &**

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

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

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

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

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

Analysis & Decision

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

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

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

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

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

VI. Minimum Project Viability Requirement (MPVR)

Commission's Proposal

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

Stakeholder Comments

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

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

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

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

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

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

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

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

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

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

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

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

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

Analysis & Decision

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

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

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VII. Enforcement of Renewable Purchase Obligation (RPO)

Stakeholder Comments

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

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

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

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

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

“The State Commissions are bound by their own Regulations and they must act strictly in terms of their Regulations.”

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

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

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

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

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

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

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

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

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

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

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

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Analysis & Decision

44. It has been pleaded by many stakeholders that strict enforcement of RPOs should be brought about, through penalty clauses for defaulting, or may be through the Forum of Regulators (FOR), so that rolling over of RPO's should warrant a multiplication factor on the defaulters in terms of unfulfilled RPO.
45. While the Commission appreciates these concerns, it needs to be reiterated that RPO compliance is under the jurisdiction of State Commissions. The Commission has advised the SERCs on the issue of RPO compliance in the past. The Commission is committed to working with SERCs through FOR for resolution of this issue.

VIII. Miscellaneous

Stakeholder Comments

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

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

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

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

- **Value Offset of REC**

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

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

- **Bundling of Solar REC**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Tabulation

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

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Contracted power under REC mechanism: 718MW

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

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

Base price of RECs – Rs 3500 / REC

Value of Solar RECs lying unsold ~1650 crores

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

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

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

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

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

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

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

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

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

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

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Analysis & Decision

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

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

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

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

51. **Summary of Decisions**

1) Validity of all solar and non-solar RECs that are expiring between 31.03.2017 and 30.09.2017 shall stand extended up to 31.03.2018.

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

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

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

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

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

5) This order shall be effective from 1.4.2017.

Sd/-

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

Sd/-

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

Sd/-

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

Sd/-

**(Gireesh B. Pradhan)
Chairperson**

New Delhi

30th March, 2017

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

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

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

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

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

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

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

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

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

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

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

APPC Data

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

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

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

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

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

APPC Data

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

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

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

IN THE APPELLATE TRIBUNAL FOR ELECTRICITY
(Appellate Jurisdiction)

IA NO.275 OF 2017 IN
APPEAL NO.95 OF 2017
&
IA NO.305 OF 2017 IN
APPEAL NO. 105 OF 2017

Dated: 25th April, 2017

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

In the matter of :

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

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

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

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

In the matter of :

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

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

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

ORDERAPPEAL NO. 105 OF 2017

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

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

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

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

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

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

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

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

(Justice Ranjana P. Desai)
Chairperson

Annexure I

ITEM NO.13+54

COURT NO.6

SECTION XVII

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

261

Civil Appeal No(s). 6083/2017

INDIAN WIND POWER ASSOCIATION (NRC)

Appellant(s)

VERSUS

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

With C.A. No.6334/2017

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

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

CORAM :

HON'BLE MR. JUSTICE PINAKI CHANDRA GHOSE

HON'BLE MR. JUSTICE ROHINTON FALI NARIMAN

For Appellant(s)

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

Mr. Vishal Gupta, AOR

Mr. Abhishek Raj, Adv.

Mr. Aryama Sundaram, Sr. Adv.

Mr. Parinay Deep Shah, Adv.

Ms. Mandakini Ghosh, Adv.

Ms. Supriya Juneja, AOR

Mr. Saransh Shaw, Adv.

Ms. Ritika Singhal, Adv.

M. Jaggi, Adv.

For Respondent(s)

Mr. Nikhil Nayyar, AOR

Mr. N. Sai Vinod, Adv.

UPON hearing the counsel the Court made the following

O R D E R

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

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

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

(VISHAL ANAND)
COURT MASTER

(SNEH LATA SHARMA)
COURT MASTER

Circular No.: IEX/MO/242/2017

Date: 26 May 2017

Suspension of REC trading session

Dear Members,

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

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

For and on behalf of

Indian Energy Exchange Limited

Prasanna Rao
Vice President (Market Operations)

Kindly contact IEX operations- 011-43004054/53 or send email at iex-operations@iexindia.com for any clarification.

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 6083 OF 2017

WITH

I.A. NOS. 42490 AND 42496 OF 2017

INDIAN WIND POWER ASSOCIATION (NRC)

Appellant(s)

VERSUS

CENTRAL ELECTRICITY REGULATORY COMMISSION & ANR.

Respondent(s)

O R D E R

1) Application for intervention is allowed.

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

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

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

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

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

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

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

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

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

New Delhi;
July 14, 2017.

ITEM NO.52

(Revised)
COURT NO.13

SECTION XVII

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

Civil Appeal No(s). 6083/2017

INDIAN WIND POWER ASSOCIATION (NRC)

Appellant(s)

VERSUS

CENTRAL ELECTRICITY REGULATORY COMMISSION & ANR.

Respondent(s)

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

WITH

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

(FOR EX-PARTE STAY ON IA 1/2017

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

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

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

Counsel for parties:

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

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

Civil Appeal No(s). 6083/2017:

Application for intervention is allowed.

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

Pending applications, if any, also stands disposed of.

C.A. No. 6334/2017:

List this appeal in the usual course.

(R. NATARAJAN)
COURT MASTER

(SAROJ KUMARI GAUR)
COURT MASTER

(Signed order is placed on the file)

ITEM NO.52

COURT NO.13

SECTION XVII **267**

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

Civil Appeal No(s). 6083/2017

INDIAN WIND POWER ASSOCIATION (NRC)

Appellant(s)

VERSUS

CENTRAL ELECTRICITY REGULATORY COMMISSION & ANR.

Respondent(s)

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

WITH

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

(FOR EX-PARTE STAY ON IA 1/2017

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

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

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

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

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

Ms. Supriya Juneja, AOR

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

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

Civil Appeal No(s). 6083/2017:

Application for intervention is allowed.

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

Pending applications, if any, also stands disposed of.

C.A. No. 6334/2017:

List this appeal in the usual course.

(R. NATARAJAN)
COURT MASTER

(SAROJ KUMARI GAUR)
COURT MASTER

(Signed order is placed on the file)

Circular No.: IEX/MO/248/2017

Date: 24 July 2017

Recommencement of REC trading session for Non-Solar only

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

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

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

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



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

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

Members are requested to kindly take note of the same.

For and on behalf of

Indian Energy Exchange Limited

Akhilesh Awasthy
Director (Market Operations)

Kindly contact IEX operations- 011-43004054/53 or send email at iex-operations@iexindia.com for any clarification.

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

I.A.NO. 82970 OF 2017

IN

CIVIL APPEAL No. 6334 OF 2017

GREEN ENERGY ASSOCIATION ... Appellant(s)

Versus

CENTRAL ELECTRICITY REGULATORY COMMISSION ... Respondent(s)

O R D E R

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

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

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

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

New Delhi,
Dated: 20th September, 2017.

ITEM NO.7

COURT NO.12

SECTION XVII **272**

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

Civil Appeal No(s). 6334/2017

GREEN ENERGY ASSOCIATION

Appellant(s)

VERSUS

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

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

CORAM :

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

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

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

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

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

Pending applications, if any, shall stand disposed of.

(SHASHI SAREEN)

AR CUM PS

(Signed order is placed on the file)

(SAROJ KUMARI GAUR)

BRANCH OFFICER

APPELLATE TRIBUNAL FOR ELECTRICITY AT NEW DELHI
(APPELLATE JURISDICTION)

APPEAL NO. 95 OF 2017, APPEAL NO. 105 of 2017
AND
APPEAL NO.173 OF 2017

Dated : 12th April, 2018

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

APPEAL NO. 95 OF 2017

IN THE MATTER OF:

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

... Appellant

Versus

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

... Respondent

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

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

APPEAL NO. 105 of 2017**IN THE MATTER OF:**

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

Versus

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

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

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

APPEAL NO. 173 OF 2017**IN THE MATTER OF:**

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

Versus

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

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

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

J U D G M E N T

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

Appeal No. 95 of 2017

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

APPEAL NO. 105 of 2017

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

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

APPEAL NO.173 OF 2017

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

4. Brief Facts of the Case(s)

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

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

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

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

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

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

- 4.7 As per the Appellants, the Impugned Order has dealt an adverse blow to the REC Industry. The members of the Appellant associations are facing erosion of 70% of its net worth while some members are on the verge of being declared a NPA due to drastic reduction in REC pricing. The importance of setting up and promoting a robust REC market cannot be denied and becomes clearer from a perusal of Para 1.7 of the statement of objects and reasons of CERC REC Regulations, wherein it has been reiterated that the concept of REC helps in addressing the mismatch between the availability of Renewable Energy sources.
- 4.8 It is submitted by the Appellants that the large number of pending RECs is not just a result of non-compliance by the obligated entities, but also the inaction of the SERCs. The SERCs have allowed waiver as well as carry-forward of the shortfall in RPO compliance by the obligated entities even though RECs were available in the market. It is further submitted that the REC market is already struggling to stay afloat and such decisions will cumulatively obliterate the demand for RECs. The Solar and Non-Solar Power developers who have opted for the REC mechanism and in turn subsidized their power cost in the hope of recovering their costs through RECs, will not be able to recover costs or keep the power subsidized.
- 4.9 The appellants allege that the CERC by the Impugned Order has refrained from protecting the unsold REC inventory by providing a vintage multiplier or by creating separate markets for RECs issued till 31.03.2017 and RECs issued post 31.03.2017. The CERC has been guided by the

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

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

5. QUESTIONS OF LAW:-

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

- 6.18 The regulatory scheme also represented to the investors that the Obligated Entities who are required to buy renewable power will purchase such renewable power or RECs within a defined timeframe in order to achieve this, each State Commission was required to adopt its own RPO regulation in terms of the draft model regulation proposed by the Forum of Regulators. However, after the investments were made, the Central Commission and other regulatory institutions including the Appellate Tribunal realized that the Obligated Entities were not purchasing RECs and as a result the REC inventory remained unsold. In this context, reference may be made to the following orders passed by the Central Commission as well as this Hon'ble Tribunal from time to time, i.e., 09.12.2012 in petition no. 266/SM/2012; order dated 11.12.2013 in petition no. 266/ SM/ 2012, order dated 16.04.2015 in appeal no. 258 of 2013.
6. 19 In fact, the Appellant Association has filed multiple cases before this Hon'ble Tribunal as well as respective State Commissions against waiver and carry-forward of RPO allowed by State Commissions. These matters which are till date pending are reflective of the situation of RPO non-compliance in the Nation. The Appellant Association today is being made

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

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

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

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

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

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

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

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

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

The salient points are as under:

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

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

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

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

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

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

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

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

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

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

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

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

- 7.11 The Floor Price which guarantees recovery of the cost of generation considering the basic minimum requirement for ensuring viability of renewable energy project set up by the members' of the Appellants' Association was pegged at the same level without any variation or change.
- 7.12 The Central Commission however vide the impugned Order dated 30.03.2017 for the control period starting 01.04.2017, has much to the prejudice of the members' of the Appellants' Association not only reduced the Forbearance and Floor Price for the REC framework, but done so with retrospective application and thereby made it applicable on all existing renewable energy projects set up at an earlier point in time which continue to have unsold RECs. The reduced Floor and Forbearance price as per the impugned Order is as under:

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

- 7.13 This reduction is moreover, also based on a totally new methodology for determination of floor and forbearance price of REC in significant departure to the principle followed uniformly under the previous REC pricing orders.
- 7.14 It is the Appellants' contention in these appeals that the reduction of REC pricing by adopting new methodology and making it applicable retrospectively is improper and without considering and / or adhering to the provisions of the Electricity Act, National Tariff Policy and the REC

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

7.15 By way of the impugned Order dated 30.03.2017, the Central Commission has failed to appreciate in proper perspective the well acknowledged fact that the existing renewable energy projects already had sizeable unsold inventory of REC caused solely on account of lack of Renewable Purchase Obligation (RPO) enforcement by the States. These renewable energy projects were set-up by generators assuming the floor and forbearance price at a particular level.

7.16 The failure of regulators to enforce compliance of RPO is being borne by these generators for no fault of theirs; Whereas, the benefit of price reduction is being given to obligated entities that have repeatedly failed to follow the requirement of the law and have not fulfilled their RPO obligations. The effect of the impugned Order is that these obligated entities will be able to meet their past obligations at a much lower cost. The Central Commission despite acknowledging in the impugned Order that there has been lack of RPO enforcement has however, inter-alia, observed as under:

“Analysis & Decision:

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

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

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

....

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

...

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Vested Right To Get A Fixed Floor Price

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

“9. Pricing of Certificate

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

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

Certificates.” (Emphasis Supplied)

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

energy source.

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

Solar REC Floor and Forbearance Prices

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

Non-Solar REC Floor and Forbearance Prices

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

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

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

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

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

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

Promissory Estoppel

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

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

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

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

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

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

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

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

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

Vintage Multiplier

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

“7. The Commission shall determine through a separate order, the quantum of Certificate to be issued to the eligible entities being the solar generating companies registered under REC framework prior to 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 was made applicable to the solar generating companies registered under REC framework prior 1st January, 2015 and shall be applicable for the existing and future solar RECs **for the period from 1st January, 2015 up to 31st March, 2017**, after which such projects shall be eligible for one REC for one megawatt hour of electricity generated.” (emphasis supplied)*

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

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

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

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

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

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

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

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

Methodology and Principles of Determination of Floor And Forbearance Price.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

8.29 Pertinently, cost recovery is guaranteed by the regulator only in cases of project specific tariff determination, wherein detailed cost analysis is undertaken by the regulator in respect of each such project. REC's is not a project specific tariff determination mechanism. It is a market based instrument and the investors choose the scheme with due knowledge of the risks and rewards associated with the scheme. The CERC determines floor and forbearance prices based on the market realities and with due regard to the need for balancing the interests of consumers and investors. Such prices are generic in nature and cannot be expected to address the special circumstances of every project.

8.30 The argument regarding the difference in the project size of the solar projects diminishing the economies of scale is misleading. The Central Commission has duly examined the viability of solar projects in 17 States, by comparing the average bid tariff with the respective State APPC. Majority of the States enlisted do not need any floor price support, as Minimum Project Viability requirement (MPVR) is negative in those States. Thus, with a floor price of Rs.1/unit, smaller projects with tariff greater than the large projects are still viable in these States. All the members of the Appellant Association in Appeal No. 95/2017 have projects registered in Madhya Pradesh. For Madhya Pradesh, the floor price based on MPVR is determined as Rs.0.44/unit. Hence, there is sufficient buffer to account for large scale efficiencies.

8.31 The Central Commission is responsible for balancing the interests of the

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

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

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

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

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

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

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

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

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

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

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

10. CERC Regulations for promotion of Renewable Energy Generation:

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

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

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

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

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

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

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

12. Our Findings & Analysis :

Issue No.1:-

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

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

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

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

Our Findings:

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

“9. Pricing of Certificate

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

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

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

Issue No.2:-

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

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

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

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

- 12.7 The Central Commission has further brought out that the Appellants in the Appeal No.95 of 2017 have tried to portray that the Commission introduced vintage multiplier in case of the solar generating companies by its order dated 30.12.2014 in Petition NO.06/2014 (SM). However, the said order merely suggests the amendment of regulations which was done on the same date. The Central Commission through the third amendment to the REC Regulations which came into effect from 1.1.2015 introduced the vintage multiplier in case of the solar generating companies registered under the REC framework prior to 1.1.2015. The vintage multiplier as specified in the Clause 7 of the Regulation was stipulated to be applicable for the existing and future solar RECs for the period from 01.0.1.2015 upto 31.03.2017. The Central Commission has further submitted that the vintage multiplier was specified by way of an amendment by exercising its legislative power. The Appellants were well aware of timeframe and they enjoyed the benefits and did not choose to challenge this amendment. Now, the Appellants have no right to get the vintage

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

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

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

Our Findings:

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

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

Issue No.3:-

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

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

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

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

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

Our Findings:

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

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

Issue No.4:-

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

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

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

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

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

Our Findings:

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

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

Summary of our findings:-

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

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

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

ORDER

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

No order as to cost.

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

(S.D. Dubey)
Technical Member

(Justice N.K. Patil)
Judicial Member

REPORTABLE / ~~NON-REPORTABLE~~

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केन्द्रीय विद्युत विनियामक आयोग
CENTRAL ELECTRICITY REGULATORY COMMISSION

Annexure O

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Petition No.2/SM/2017

Dated: 23rd April, 2018

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

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

Sir,

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

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

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

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

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

4. This issues with the approval of the Commission.

Yours faithfully,

(T. Rout)
Chief (Legal)

Copy to:

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

तीसरी मंजिल, चन्द्रलोक बिल्डिंग, 36, जनपथ, नई दिल्ली-110 001
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केन्द्रीय विद्युत विनियामक आयोग
CENTRAL ELECTRICITY REGULATORY COMMISSION

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Petition No.2/SM/2017

Dated: 23rd April, 2018

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

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

Sir,

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

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

- (a) Trading of RECs (Solar and Non-Solar) shall be carried out henceforth in accordance with the Commission's Order dated 30.03.2017 in Petition No. 2/SM/2017.
- (b) Deposit of the differential amount of Rs.500/- per REC with the Commission shall be discontinued. .

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

4. This issues with the approval of the Commission.

Yours faithfully,

(T. Rout)
Chief (Legal)

Copy to:

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

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

Annexure P

ITEM NO.33

COURT NO.11

SECTION XVII

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

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Civil Appeal No(s). 4801/2018

INDIAN WIND POWER ASSOCIATION (NRC)

Appellant(s)

VERSUS

CENTRAL ELECTRICITY REGULATORY COMMISSION (CERC) & ANR.

Respondent(s)

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

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

CORAM :

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

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

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

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

Appeal admitted.

Interim orders dated 08.05.2017 and 14.07.2017 to
continue

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

(SHASHI SAREEN)
AR CUM PS

(SAROJ KUMARI GAUR)
BRANCH OFFICER

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.

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

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

Annexure - I

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

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

Annexure - II

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

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

Annexure R

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A RIL's RPO Obligation for Year 2017-18

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

B Details of REC Trade carried out in March 2018

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

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

C Shortfall in RPO

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