

Kolkata , 09th March 2022

To
The Secretary
Central Electricity Regulatory Commission
3 rd & 4th Floor, Chanderlok Building,
36, Janpath,
New Delhi - 110001

Subject : Comments/suggestions/objections on the draft of Central Electricity Regulatory Commission (Terms and Conditions for Renewable Energy Certificates for Renewable Energy Generation) Regulations, 2022

Dear Sir,

Bengal Energy Limited (BEL) is a company incorporated under the Companies Act, 1956 having its registered address at Om Tower, 3rd Floor, 32, J.L. Nehru Road, Kolkata – 700 071. Bengal Energy Limited operates as a coke manufacturing unit in district of Paschim Medinipur in West Bengal. The entire manufacturing process of coke from coal releases an **unavoidable** flue gas called ‘coke oven gas’ at a high temperature which goes as waste in the environment. BEL has invested in “Waste Heat Recovery Coke Oven Technology” for tapping the waste heat to set up and operate a Waste Heat Based Power Plant of 40 mega-watt capacity. By virtue of owning, operating and maintaining such generating station BEL is a generating company within the meaning of Section 2 (28) of the Electricity Act 2003. BEL is also a consumer of electricity, within the meaning of said Act of 2003, of West Bengal State Electricity Distribution Company Limited (WBSEDCL). Recently, Central Electricity Regulatory Commission by public notice No. RA-14026(11)/1/2022-CERC dated 15th February 2022 has issued draft Central Electricity Regulatory Commission (Terms and Conditions for Renewable Energy Certificates for Renewable Energy Generation) Regulations, 2022. Both as a generator and prospective open access consumer BEL is going to be affected seriously if the draft Central Electricity Regulatory Commission (Terms and Conditions for Renewable Energy Certificates for Renewable Energy Generation) Regulations, 2022 is being finalised without any appropriate modification in certain areas as identified by us.

Asis Kumar Ghosh



Page 1 of 8

BENGAL ENERGY LIMITED

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CIN : U10100WB2007PLC115887

Thus, BEL is providing the comments/ suggestions/ objections on the draft of Central Electricity Regulatory Commission (Terms and Conditions for Renewable Energy Certificates for Renewable Energy Generation) Regulations, 2022 in Annexure-A of this letter for due modification so that cogeneration sources are promoted as per section 86(1)(e) of the Electricity Act 2003 .

Thanking you

Your Truly

For Bengal Energy Ltd



A K Maharaj

Chief Project Coordinator

Encl : Annexure - A



Annexure-A

Comments/Suggestions/Objections Bengal Energy Limited (BEL) on Central Electricity Regulatory Commission (Terms and Conditions for Renewable Energy Certificates for Renewable Energy Generation) Regulations, 2022.

In this note the draft of Central Electricity Regulatory Commission (Terms and Conditions for Renewable Energy Certificates for Renewable Energy Generation) Regulations, 2022 in short will be called as “draft CERC REC Regulations 2022”. The comments/ suggestions/ objections on this “draft CERC REC Regulations 2022” of BEL are as follows:

A) Concern Fundamental Issues:

No explanatory memorandum has been issued against the draft CERC REC Regulations 2022 though Central Electricity Regulatory Commission (CERC) for quite long period were issuing explanatory memorandum against draft regulations. This lacuna is required to be addressed properly through any order or any alternative mechanism.

As per clause (3) of article 77 of the Constitution the Government of India (Allocation of Business) Rules, 1961 had been framed where the Ministry of Power, and no other ministry, has been entrusted with administration of the Act. Accordingly, Tariff policy of 2016 has been issued by Ministry of Power, Government of India. The section 86(4) of the Electricity Act 2003 (henceforth in short will be called as ‘Act’) mandates that while discharging any legislative function of framing any regulations CERC shall be guided by the Tariff Policy unless it is inconsistent with the Act.

In the draft CERC REC Regulations 2022 the Renewable Energy Certificate mechanism has been developed under section 66 of the Act to provide a market mechanism before the State Electricity Regulatory Commission (SERC) so that they can provide a mean to the purchaser of electricity such as distribution licensees or consumer availing open access to meet their electricity purchase obligation under section 86(1)(e) of the Act. The responsibility of promotion of generation from renewable energy sources and cogeneration has been only exclusively entrusted with the State Electricity Regulatory Commissions (SERC). CERC has no equivalent power under the Act. Thus, while finalising the draft CERC REC Regulations 2022, CERC shall ensure that such finalised regulations shall not create any problem to the SERCs in discharging their function as envisaged under section 86(1)(e) of the Act.

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While finalising the draft CERC REC Regulations 2022 please also consider the clause 3(22) of the *draft National Renewable Act, 2015 prepared by Ministry of New And Renewable Energy (MNRE) where the definition of "Renewable Energy (RE) Sources" also includes industrial waste.* As per present definition of 'renewable energy sources' in the Central Electricity Regulatory Commission (Terms and Conditions for Recognition and Issuance of Renewable Energy Certificate for Renewable Energy Generation) Regulations, 2010 any source recognised or approved by MNRE shall be considered as a renewable energy source. Thus, the industrial waste shall be included in the definition of renewable energy sources as MNRE has already recognised it in *draft National Renewable Act, 2015*.

B) Issues on definition of "renewable energy sources"

There is neither any definition of renewable energy sources in the Act nor in the Tariff Policy issued on 28-01-2016 (hereinafter in short will be called as Tariff Policy). Thus, the particular renewable energy sources that has been mentioned by name in the Tariff Policy has to be included by CERC under the definition of renewable energy sources in the draft CERC REC Regulations 2022. In paragraph 6.4(2) of Tariff Policy wind, solar and waste to energy plant has been mentioned by name as renewable energy sources. CERC, as a creature of the Act, cannot restrict the waste to energy mere to urban or municipal waste which it has done in the definition of renewable energy sources in the draft CERC REC Regulations 2022. CERC has to ensure that whole spectrum of sources under waste to energy plant has to be covered under the definition of "renewable energy sources". Thus, the industrial waste specially in form of waste heat or flue gas has also to be considered. This is in line with the draft National Renewable Act, 2015 as detailed in paragraph A above. Accordingly, we proposed that the definition of 'renewable energy sources' may kindly be considered by CERC as follows:

'renewable energy sources' means sources of renewable energy such as hydro, wind, solar including its integration with combined cycle, biomass, bio fuel cogeneration, urban or municipal waste or industrial waste (including waste heat or waste flue gas) and such other sources as recognized or approved by the Central Government;

C) Issues on definition of "renewable purchase obligation"

The definition of 'renewable purchase obligation' or 'RPO' in the draft CERC REC Regulations 2022 has to be scrutinised under the objective of the section 86(1)(e) of the Act. To find out the objective of the said section 86(1)(e) of the Act we have to find out such objective from different documents that has force of law:



- i) At paragraph 53 of order of Appellate Tribunal of Electricity (APTEL) dated 02-08-2021 in Appeal No 176 of 2020 following is the observation of Hon'ble APTEL

“Section 86(1)(e) of the Act contemplates two categories of generators; one is cogeneration and the other is ‘generation of power from renewable sources. The above section uses the phrases ‘cogeneration’ and ‘renewable energy sources. Therefore, the section mandates that both categories of generators must be promoted by the Appropriate Commission concerned issuing directions to distribution licensees to purchase electricity from both the categories. From reading of the above Section i.e., 86(1)(e) what emerges is, the cogenerating plants are required to be treated at par with renewable energy generating plants. Irrespective of the nature of fuel used in the cogeneration of power in the cogenerating plant to generate power, cogeneration has to be encouraged and promoted in terms of Section 86(1)(e) of the Act. Therefore, cogeneration plant cannot be fastened with the liability of purchasing power from renewable sources to meet its RPO obligation irrespective of the fuel used for cogeneration. From this it is seen that the nature of promotion ascribed to cogeneration plants, it is a sort of protection or special status is attached to cogeneration under statute i.e., section 86(1)(e) of the Act. There is distinction and difference attached to both categories of generation of power under Section 86(1)(e), which would lead to a conclusion that both are required to be promoted. In other words, one cannot be given preference to the other. If such preference is given, it would amount to defeating the purpose and intention of the Section itself. Therefore, one category of generation of power cannot be allowed to affect the other category of generation of power.” (emphasis supplied)

Prior to such order in paragraph 26 of the APTEL order dated 20.01.2020 related to Appeal No 252 the Hon'ble APTEL has mentioned following:

“From the above, it naturally follows that the statutory policy inherent in Section 86(1)(e) of Electricity Act 2003 expects the Regulatory Commissions to promote both “generation of electricity from renewable sources of energy” and also “cogeneration”. We mention the two in reverse order for better clarity and for removal of doubts, if any persist.”

- ii) As per the above two judgements in (i) the section 86(1)(e) of the Act casts following three specific objectives:
- a) Both generation of electricity from renewable energy sources and cogeneration, irrespective of fuel used in cogeneration of power, has to be promoted;

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- b) Both generation of electricity from renewable energy sources and cogeneration has to be **treated at par** with each other;
 - c) Appropriate Commission shall promote both generation of electricity from renewable energy sources and cogeneration by issuing directions to distribution licensees to purchase electricity from both the categories;
- iii) As already discussed in paragraph A, the paragraph 6.4(1) of Tariff Policy has to be taken into consideration in totality with emphasising on the proviso of the main paragraph while finalising the draft CERC REC Regulations 2022. The paragraph 6.4(1) of Tariff Policy are as follows:

“Pursuant to provisions of section 86(1)(e) of the Act, the Appropriate Commission shall fix a minimum percentage of the total consumption of electricity in the area of a distribution licensee for purchase of energy from renewable energy sources, taking into account availability of such resources and its impact on retail tariffs. Cost of purchase of renewable energy shall be taken into account while determining tariff by SERCs. Long term growth trajectory of Renewable Purchase Obligations (RPOs) will be prescribed by the Ministry of Power in consultation with MNRE.

Provided that cogeneration from sources other than renewable sources shall not be excluded from the applicability of RPOs. “

The following points emerges from the above paragraph:

- a) The paragraph is in relation to section 86(1)(e) of the Act.
- b) In the said paragraph a new set of words such as “Renewable Purchase Obligation” or “RPO” has been introduced without giving any definition.
- c) Such set of words “Renewable Purchase Obligation” is not available in the Act.
- d) From plain reading of the paragraph 6.4(1) after considering the definition of Cogeneration in the Act it is clear that the proviso of the paragraph 6.4(1) of the Tariff Policy clearly means that Cogeneration of electricity from sources other than renewable sources has also to be considered as eligible source to meet RPO. Thus, both cogeneration from renewable energy sources and cogeneration from other than renewable sources are to be considered as eligible sources to meet RPO.



It became clear from paragraph (ii) and sub-paragraph (d) of paragraph (iii) that under section 86(1) (e) of the Act both cogeneration from renewable energy sources and cogeneration from other than renewable sources are to be promoted. If CERC decides to promote renewable sources only and not promoting the cogeneration from other than renewable sources while framing any regulation under section 66 of the Act, then that will put the SERCs in the difficult positions in promotion of cogeneration from other than renewable sources **at par with** renewable sources as discussed in (ii) above. As CERC has no power equivalent to section 86(1)(e) of the Act, thus while finalising regulation on the basis of draft CERC REC Regulations 2022, CERC shall ensure that no discrimination arises out of the finalised regulations so that promotion of cogeneration from other than renewable sources and cogeneration/generation from renewable sources **can be done at par** by the SERCs.

From above discussion it can be said that the words **“Renewable Purchase Obligation” or “RPO” is deceptive as it creates a misleading sense of promotion of renewable sources only which is a part requirement of section 86(1)(e) of the Act and does not reflect the promotion of gamut of sources that are to be promoted under section 86(1)(e) of the Act.** Thus, it is suggested that instead of the coinage of words “renewable purchase obligation” the term “statutory purchase obligation” or “SPO” can be used. In such case the definition shall be as follows:

“ ‘statutory purchase obligation’ or ‘SPO’ means the requirement specified by the State Commissions under clause (e) of sub-section (1) of Section 86 of the Act for an entity to purchase electricity from renewable energy sources and/or cogeneration sources;”

- v) If CERC does not agree to our proposal in (iv) above, but agrees to our proposal in paragraph (B) to include industrial waste as a renewable source in the definition of “renewable energy sources” then most of the cogeneration from other than renewable sources will be accommodated. But in our opinion the proposal at sub-paragraph (iv) of this paragraph (C) is more technically appropriate proposal.

If CERC decides to continue with the words “renewable purchase obligation” then the definition has to be in the following pattern

“ ‘renewable purchase obligation’ or ‘RPO’ means the requirement specified by the State Commissions under clause (e) of sub-section (1) of Section 86 of the Act for an entity to purchase electricity from renewable energy sources and/or cogeneration sources;”

Amegorally



The draft CERC REC Regulations 2022 has restricted the promotion of the cogeneration from other than renewable sources under section 86(1)(e) of the Act, as already explained, by using the REC mechanism. Draft CERC REC Regulations 2022 is not considering the cogeneration from other than renewable sources. This is a clear discrimination to the generators of the state like West Bengal which have very low renewable potential and a reasonable potential of cogeneration sources. This requires to be addressed properly.

In view of our above submission we would request that Hon'ble CERC may kindly accommodate our proposal in paragraph (C) and (D) of the above submission.

Page 8 of 8

A handwritten signature in blue ink, appearing to read "Ajay Kumar Singh", is written over the page.