

SISMA TN/F89A/17/2022

March 09, 2022.



**THE SOUTH INDIAN
SUGAR MILLS ASSOCIATION
(TAMIL NADU)**

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

By
Email: secy@cercind.gov.in
advisor-re@cercind.gov.in

Sir,

Sub: Public Notice No. RA-14026(11)/1/2022-CERC dated 15.02.2022 inviting comments/ suggestions/ objections from stakeholders on the draft CERC (Terms and Conditions for Renewable Energy Certificates for Renewable Energy Generation) Regulations, 2022

1. We are an Association of private sector sugar mills in the State of Tamil Nadu. The members of our Association have established 25 bagasse based cogeneration plants in Tamil Nadu with an aggregate installed capacity of 569.80 MW. Being engaged in the production of renewable energy, they have vital stakes in the norms governing the issue of Renewable Energy Certificate (REC) and the pricing thereof. Accordingly we convey our comments, suggestions/ objections and submissions in respect of the draft Regulations and in response to the public notice cited above.

Eligibility for issuance of RECs

2. Regulation 4 of the draft 2022 REC Regulations proposes to extend the list of eligible entities for RECs that would now specifically cover all captive generating plants (CGP) based on renewable energy sources. There is no condition whatsoever on the date of commissioning of such CGP. Having regard to India's persistent thrust for achieving exponential increase in renewable energy share, we welcome this step to broad base CGP coverage.
3. There is however a condition attached in respect of RECs issued to captive generating stations. The proviso to Regulation 4(3) in the draft seeks to impose an embargo that RECs issued to such captive generating stations to the extent of self-consumption shall not be eligible for sale.

4. It is apposite at this juncture to trace the development of REC entitlement for CGPs. The Hon'ble Commission while issuing the draft Fourth Amendment to REC Regulations in 2016 had originally proposed to deprive CGPs the benefit of REC. Several of the stakeholders staunchly opposed this change underpinning the imperative to differentiate between old and new RE projects. In the Statement of Reasons dated 28.03.2016, the Hon'ble Commission has extensively recorded the grounds of these objections.

5. The Hon'ble Commission in the course of its detailed analysis was quite appreciative and considerate of the need to safeguard the investment decisions made based on extant REC framework. In the Statement of Reasons of the order dated 28.03.2016 pertaining to CERC (Terms and Conditions for recognition and issuance of Renewable Energy Certificate for Renewable Energy Generation) (Fourth Amendment) Regulations, 2015, the Hon'ble Commission in Para 4.3 Analysis and Decision has recorded the following:

Quote

Para 4.3.9

Considering the above and with due regard to safeguard investments made consequent upon the REC framework, the Commission has decided to retain provisions of participation for trading under REC framework, for only those CGPs who have made the investment decision after considering the REC regulations. The Central Electricity Regulatory Commission (Terms and Conditions for recognition and issuance of Renewable Energy Certificate for Renewable Energy Generation) (First Amendment) Regulations, 2010 issued on 29th September, 2010 provided the framework to allow CGPs to participate in REC framework. This date of, 29th September 2010, shall be considered as the cut-off date as it was only after the issuance of the First Amendment, the CGPs were made eligible for participation in REC framework. Additionally, if by 31st March 2016, some projects are commissioned that were contemplating registration under REC, the Commission is allowing 3 months for them to register with the Central Agency. Thus, to summarize:

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- a) The CGPs having date of commissioning on or after 29thSeptember 2010 and already registered with Central Agency under REC framework before 30th June 2016 shall be eligible for REC issuance and dealing in any of the power exchanges.
- b) The CGPs meeting any of the following conditions, i.e. having date of commissioning prior to 29thSeptember 2010 or after 31stMarch 2016 ii) not registered with Central Agency before 30thJune 2016, shall not be eligible to participate in the REC framework. The Commission is of the view that withdrawing the benefit of REC scheme to these CGPs would not amount to any reversal of policy or regulation as investments by these CGPs were made prior to the issuance of REC regulations or after this amendment, as applicable.

Para 4.3.10

Thus, the Commission has decided not to extend REC benefit to the RE based CGPs commissioned after 31.03.2016. In other words, RE based CGPs set up after 31stMarch,2016 shall not be eligible for issuance and dealing in RECs.

Unquote

6. Pursuant to the above, the Hon'ble Commission by Notification dated 23.03.2016 inserted a specific clause (1A) to Regulation 5 of the REC Regulations 2010. This is to protect the right of CGPs based on renewable energy sources, including renewable energy generating plant not fulfilling the conditions of CGP as prescribed in the Electricity Rules, 2005 but having self-consumption. This is subject to fulfillment of two conditions:
 - a) The CGP should have been commissioned between 29.09.2010 and 31.03.2016; and
 - b) Registered with Central Agency under REC scheme on or before 30.06.2016.

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7. Based on the above, bagasse based cogeneration units commissioned during the qualifying period, though exporting power to State Discoms under long term PPA on preferential tariff were duly protected for the issue of RECs relatable to captive consumption of renewable energy so produced. Further, they could sell the RECs in the market, though the price has often been only at floor level, and sustain the viability of their power projects otherwise severely impacted by the undue delay in the realization of power dues from State Discoms.
8. The draft of the 2022 Regulations now seeks to deprive the sale of RECs in the case of these CGPs. This at once takes away the grandfathering benefit under the 2016 amendment. This would unarguably cause serious prejudice and vitiate the rationale on which investment decision was taken in respect of these projects, the grounds whereof have fairly been discussed and conceded by the Hon'ble Commission in 2016.
9. All our bagasse based plants meet close to 100% of their captive power requirement of the other segments as and by way of renewable energy. Hence the restraint on sale of RECs related to captive consumption would effectively render the RECs otiose.
10. We therefore respectfully submit that the Hon'ble Commission following its rationale in 2016 and applying the rule of consistency must now come forward to protect the right of sale of RECs in the case of those CGPs that commissioned their projects during the qualifying period as specified in the 2016 amendment.
11. It may no doubt be open to the Hon'ble Commission to bring in conditionalities and restraints concomitant with the expansion of the list of eligible entities. However such a restriction should not operate retrospectively to impact the REC entitlement, including the right of sale, in the case of cogen units established during the qualifying period and covered under Regulation 5(1A) of the 2010 REC Regulations.

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12. Further, Regulation 4 though seeks to cover captive generating stations, carries no specific definition of this term. Under the Electricity Rules, 2005, CGP normally would mean those consuming not less than 51% energy produced for captive gain. In the case of bagasse based cogeneration it would be far below this level. Accordingly it is desirable to have an explicit clause on the lines of existing Regulation 5(1B) to clarify that 'CGP includes renewable energy generating plant not fulfilling the conditions of CGP as prescribed in the Electricity Rules 2005 but having self-consumption'.
13. We accordingly wish to submit and reiterate that having regard to the principled and equitable stand taken by the Hon'ble Commission in 2016, it is fair and just to insert a second proviso to Regulation 4(3) of the proposed 2022 REC Regulations. This second proviso shall protect the right of sale of RECs relatable to captive consumption in the case of any renewable energy producer having commissioned the plant during 29.09.2010 to 31.03.2016.
14. We sincerely request that the Hon'ble Commission may be pleased to consider our above suggestion and render justice while enacting the final REC Regulations.

Thanking you,

Yours faithfully,

A large, stylized handwritten signature in blue ink, appearing to read "S Chellappa".

S CHELLAPPA
SECRETARY

A small, circular handwritten mark or stamp in blue ink, possibly a signature or initials.