



FORUM OF SCIENTISTS, ENGINEERS & TECHNOLOGISTS (FOSET)

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REF: FOSET/COR-03/AP/147

DATE: 17.03.2022.

To:

The Secretary

Central Electricity Regulatory Commission

3rd & 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

Sir,

Forum of Scientists, Engineers and Technologists (FOSET) is an organisation registered under Society Registration Act XXI of 1860, Registration No.:SO054424 of 1986-1987 having date of registration 24th February, 1987 and dedicated to highlighting Social, Political & Economic implications of Science and Technology (S&T), focus on the role of Science & Technology (S&T) professionals to satisfy the needs of the society and to build awareness of S&T among the common people.

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. Against such draft, Central Electricity Regulatory Commission (Terms and Conditions for Renewable Energy Certificates for Renewable Energy Generation) Regulations, 2022, our comments/ suggestions/ objections are attached in Annexure-1 of this letter.

Yours Sincerely,

Subimal Sen

(SUBIMAL SEN)

President

Forum of Scientists, Engineers
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Annexure-1

Comments of FOSET on Central Electricity Regulatory Commission (Terms and Conditions for Renewable Energy Certificates for Renewable Energy Generation) Regulations, 2022.

With reference to your public notice No. RA-14026(11)/1/2022-CERC Dated 15th Feb, 2022 Forum of Scientists, Engineers and Technologists (FOSET) intend to submit our comments/suggestions/ objections on the draft of Central Electricity Regulatory Commission (Terms and Conditions for Renewable Energy Certificates for Renewable Energy Generation) Regulations, 2022 (hereinafter will be called in short as "draft CERC REC Regulations 2022") in the following paragraphs:

- A) Initially this draft CERC REC Regulations 2022 has been issued without any Explanatory Memorandum. Subsequently, the Explanatory Memorandum has been uploaded in the Website. This creates problem in framing the opinion initially. It is not always possible to keep watch on the website on regular basis. Thus, we request Hon'ble CERC that in future for any other draft regulation CERC may kindly bring out the concern explanatory memorandum alongwith the draft regulations.
- B) In the draft CERC REC Regulations 2022 the definition of renewable energy sources has considered only urban or municipal waste. In exercise of the powers conferred by clause (3) of article 77 of the Constitution the Government of India (Allocation of Business) Rules, 1961 has been framed. Under such rule only Ministry of Power, and no other ministry, has been entrusted with administration of the Act. Thus, Ministry of Power was issuing the Tariff Policy in 2006 and 2016. According to section 86(4) of the Act while discharging its function CERC shall be guided by the Tariff Policy. Thus, while framing any regulation under the Act the concern commission have to rely on different policies of Tariff Policy unless it is not consistent with the Act as required under sub-section (1) of section 181 of the Act.
- C) In the draft CERC REC Regulations 2022 it has been observed that while such Renewable Energy Certificate mechanism has been framed under market development provisions under section 66 of the Act, CERC has developed such mechanism to facilitate a market mechanism tool to the State Electricity Regulatory Commission (SERC) for achieving the objective of section 86(1)(e) of the Act under which the responsibility of promotion of generation from renewable energy sources and cogeneration has been bestowed only upon the SERC and not upon the CERC at all. Thus, CERC shall be careful that its finalised regulation on the basis of draft CERC REC Regulations 2022 shall not create any hindrance, as detailed out in subsequent paragraphs, to the SERCs in discharging their responsibility under section 86(1)(e) of the Act.



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- D) In absence of any definition of renewable energy sources in the Act and also in Tariff Policy dated 28-01-2016 (hereinafter in short called as Tariff Policy), CERC has to consider **at least** the specific renewable sources which are specifically mentioned by name of the sources in the Tariff Policy. From paragraph 6.4(2) of Tariff Policy the renewable sources mentioned by name are wind, solar and waste to energy plant. Thus, whole gamut of waste to energy plant has to be considered under the definition of renewable energy sources. In such case the industrial waste specially in form of waste heat or flue gas has also to be considered. CERC, a creature of the Act, cannot restrict the waste to energy mere to urban or municipal waste. Thus, the following definition of 'renewable energy sources' may kindly be considered by CERC

'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;

In this context, please note that at clause 3(22) of the draft National Renewable Act, 2015 prepared by Ministry of New And Renewable Energy the definition of "Renewable Energy(RE) Sources" also includes industrial waste.

- E) The definition of 'renewable purchase obligation' or 'RPO' in the draft CERC REC Regulations 2022 has to be considered from 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) In this regard following judgement of Hon'ble Appellate Tribunal for Electricity (APTEL) may kindly be noted. In paragraph 26 of the 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) Subsequent to the above order, at paragraph 53 of another APTEL order 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

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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)

- iii) From the above two judgements in (i) and (ii) it is clear that section 86(1)(e) of the Act mandates following points:
- Both generation of electricity from renewable energy sources and cogeneration, irrespective of fuel used in cogeneration of power, has to be promoted and **treated at par with each other;**
 - both generation of electricity from renewable energy sources and cogeneration must be promoted by the concern Appropriate Commission issuing directions to distribution licensees to purchase electricity from both the categories;
- iv) In pursuance to discussion in paragraph (B) above the paragraph 6.4(1) of Tariff Policy alongwith its proviso may kindly be looked into. The said 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. “

With respect to the above paragraph and its proviso following points emerges:

- The paragraph has been written down with specific reference of section 86(1)(e) of the Act and there a new coinage of words namely “Renewable

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Purchase Obligation" or "RPO" has been introduced without giving any definition. **The Act also has neither such coinage of words nor any definition of it.**

- b) As per section 2(12) of the Act cogeneration means a process that ultimately culminating in generation of electricity in addition to generation of another form of energy. Thus, the proviso of the paragraph 6.4(1) of 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. This intention is very clear from plain reading of the said paragraph. Thus, in case of cogeneration both cogeneration from renewable energy sources and cogeneration from other than renewable sources are to be considered as eligible sources for RPO.
- v) From both paragraph (iii) and sub-paragraph (b) of paragraph (iv) above it is clear that both cogeneration from renewable energy sources and cogeneration from other than renewable sources are to be promoted under section 86(1)(e) of the Act. While framing a market mechanism under section 66 of the Act, if CERC restricts the promotion of renewable sources only and keeping aside the cogeneration from other than renewable sources then that will create hindrance to the SERCs in the promotion of cogeneration from other than renewable sources **at par with** renewable sources as already explained in paragraph (iii)(a) above in pursuance to different court orders as provided in paragraph (i) and (ii) above. CERC, being a creature of the Act, cannot framed any regulations against the provision of section 86(1)(e) of the Act. In this context it is to be noted that under the Act CERC, neither has any role under section 86(1)(e) nor has any power equivalent to section 86(1)(e) of the Act. Thus, CERC shall be careful that its finalised regulation on the basis of draft CERC REC Regulations 2022 shall not create any discrimination in promotion between cogeneration from other than renewable sources and cogeneration/generation from renewable sources.

In view of the above discussion it can be said that **the coinage of words "Renewable Purchase Obligation" or "RPO" is deceptive and create a misleading sense of promotion of renewable sources only which is partial objective of section 86(1)(e) of the Act and does not reflect the sense of promotion of gamut of sources that are to be promoted under section 86(1)(e) of the Act.** Thus, it will be prudent if CERC instead of the coinage of words "renewable purchase obligation" used the term as "statutory purchase obligation" or "SPO". 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 cogeneration sources;"



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- vi) Alternatively, if CERC agrees to our proposal in paragraph (D) of inclusion of industrial waste as a renewable source in the definition of "renewable energy sources" then major part of the cogeneration from other than renewable sources will be covered. But in our opinion the proposal at sub-paragraph (v) of this paragraph (E) is more technically appropriate proposal.

If CERC intend to continue with the coinage of words "renewable purchase obligation" then in such case the definition shall be as follows:

" '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 cogeneration sources;"

- F) The definition of "renewable energy sources" and "renewable purchase obligation" in 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. Draft CERC REC Regulations 2022 is not considering the cogeneration from other than renewable sources. As a result, there is clear discrimination to the state like West Bengal which have very low renewable potential and a reasonable potential of cogeneration sources. In addition, from purchase side while the purchase of REC certificate against renewable energy sources is recognised as methodology of meeting RPO, such facility is not extended to cogeneration from other than renewable sources and thus the objective of treatment of both renewable energy sources and cogeneration sources at par as explained in sub-paragraph (iii)(a) of paragraph (E) are being affected seriously and thus as consequential impact the promotion of both renewable energy sources and cogeneration at par under section 86(1)(e) through this REC mechanism are seriously affected. In such a scenario the SERCs may find it difficult to adopt such REC mechanism as mode of meeting purchase obligation under section 86(1)(e) of the Act.

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

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