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Secretary
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Nauroji Nagar, New Delhi - 110 029

31st December, 2024

Subject: Comments on Draft CERC (Terms and Conditions for Purchase and Sale of Carbon Credit Certificates) Regulations, 2024

Dear Mr. Pruthi,

This is with reference to the Public Notice No. RA- 14206(13)/1/2024-CERC dated 13th November 2024, in matters of draft CERC (Terms and Conditions for Purchase and Sale of Carbon Credit Certificates) Regulations, 2024. I have gone through it and recorded some of my comments on the same. Additional suggestions are also provided for consideration of the Commission. We would be pleased to make a presentation before the Commission as well.

I would be pleased to address any clarification, if required.

Thanking you,
Yours sincerely,

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Comments on
Draft CERC (Terms and Conditions for Purchase and Sale of Carbon Credit) Regulations, 2024

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1. Definition of ‘Extinguishment’: In the proposed draft definition 2.1 (c) states “*Banking and Extinguishment of CCCs means banking and **Extinguishment** of CCC as provided in the Detailed Procedure for Compliance Mechanism developed under Section 12 of the Carbon Credit Trading Scheme, 2023, as amended from time to time;*” (emphasis added)

The above clause seems to refer to extinguishment of the banked Carbon Credit Certificates (CCC) beyond an identified timeline. However, the draft regulation doesn’t explicitly define the term “Extinguishment”. Furthermore, the Detailed Procedure for Compliance Mechanism developed under Section – 12 of the Carbon Credit Trading Scheme, 2023, as mentioned in the draft clause, also does not refer or define extinguishment of CCCs’.

The scope of banking and its extinguishment need to have a coherent definition across the Detailed Procedure for Compliance Mechanism document and in proposed regulations. Clarification with respect to the expiry of the CCC should also be defined clearly.

2. Clarification on the Term ‘Banking’: The Banking of CCC need to be explicitly defined in terms of any limit on the quantum and the tenure of such banked certificates. It is likely that an obligated entity possess banked certificate which it may not even able to utilize for the next compliance period as it would have achieved its obligated target. Would such ‘banked’ CCC be allowed to be further ‘banked’ for the subsequent compliance cycles (Figure 1)? It needs to be clarified that banked certificate will be valid until redeemed (i.e. perpetual) or may have a limited validity for the subsequent compliance cycles.

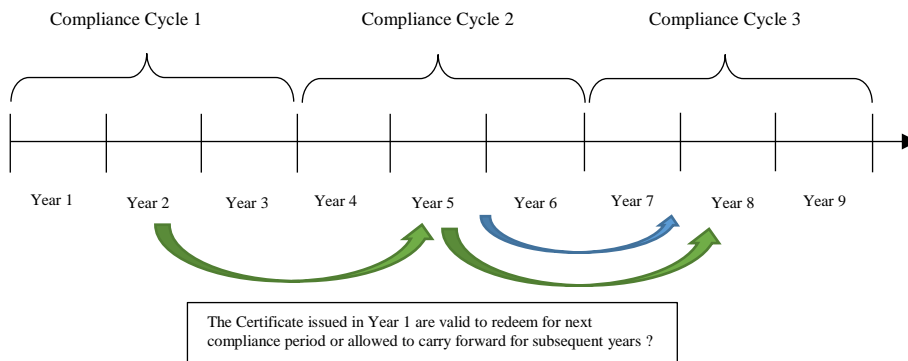


Figure 1: Life cycle of ESCerts

In case an obligated entity has an inventory of banked CCC from an immediate preceding compliance cycle and prior compliance cycle, a vintage-based priority for trading of banked certificate on power exchanges should also be outlined. The First In, First Out (FIFO) approach may be adopted for the same.

3. Scope of Forum: In the draft definition 2.1 (j) states “‘Market’ means a **forum** or platform where buyers and sellers, buy or sell CCCs through a Power Exchange;”(emphasis added)

While a market platform refer to power exchanges, there is lack of clarity about the ‘**forum**’ referred to in the draft definition. The draft definition 2.1 (u) and (v) on maximum and minimum price for trade of carbon credit **only mentions power exchanges**. To ensure that there is sufficient liquidity and competitiveness in trading of carbon credits, CCC should be tradeable on a ‘single’ platform through coupling of power exchanges. Such coupling may be defined in the context of these regulations.

The concept of ‘forum’ also needs clarification whether it means a platform other than power exchanges. Does it refer to such platforms it the international context?

4. Single or Multiple Trading of CCC: The RECs are tradable only once on the power exchanges. Post settlement of a trade, the certificates cannot be traded subsequently through another session on the exchanges. The draft regulations should explicitly clarify that the CCCs are also tradable only once and cannot be re-traded.

5. COP29 - International Carbon Market: Subsequent to the operationalisation of Article 6 of the Paris Agreement at COP29, the International Carbon Market may emerge soon. The draft regulations should also provide for international trading of CCC either directly or through other intermediaries. With the emergence of such an international market, validity of domestically credited certificate may need to be verified in-line with international benchmark, and traceability thereof.

6. Governance Framework for Registry: In the draft regulation Clause 5 states “Registry for the exchange of CCCs and shall establish the **necessary framework** for this purpose in accordance with Section 6 of CCTS 2023, as amended from time to time.”

The regulations should also specify the governance framework for the registry and its accountability thereof. Efficient benchmarks may be established for transparency and performance evaluation of the registry. The fees and charges leviable by the registry may also be defined.

7. Data Dissemination: In the draft regulation clause 6.2 (c) states “disseminate relevant market information to all stakeholders” as one of the function of the administrator. It is important to note that general public, civil society organizations and academic institutions play an important role in undertaking independent research. The scope and frequency of market information dissemination, and its archival should be clearly defined. An Application Programming Interface (API) based data dissemination may be mandated to disseminate market information.

8. Market Design Flaw Vs Floor Price: Price floors for Renewable Energy Certificates (RECs) were introduced to provide revenue assurance to the investors and, provide debt servicing assurance to the lenders. While the price floor itself is distortionary in nature as it vitiates economic signals and is often attempts to address market design flaws, it may be introduced in the short-term to bring revenue assurance. Arguments against a REC floor price were enunciated by Singh (2010, 2009) ^{[1][2]}. It has often been noted, in case of REC as well as ESCerts, that these instruments are traded generally near or at the floor price due to significant oversupply of such instruments (Figure 2). **This points towards basic design flaw in such markets due to limited targets and weak compliance mechanism.**

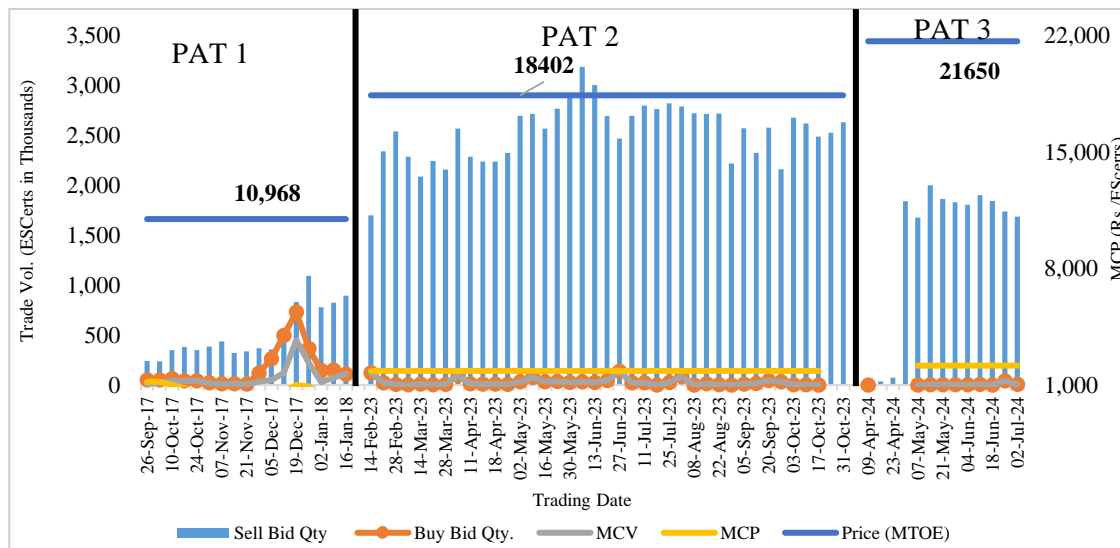


Figure 2: ESCert Trading PATs (IEX)

The price discovery has been at the floor price most of the times over the last few years. This is a reflection of inherent value that the market of ESCerts has been placing on it due to significant oversupply. Artificial floor price would further enhance this supply. **The primary goal should be to address the reason for oversupply. This can be attributed to lenient targets as well as weaker compliance.**

9. Floor Price Vs Market Stability Mechanism for CCC: In the presence of the properly designed CCC market framework, the need for setting floor & forbearance price would not ideally arise. Nevertheless, floor price may still be relevant as it provides certainty of economic signals for investment, in improvement of energy efficiency. **Defining a floor price is only the second best**

¹ Singh A. 2010, “Economic, Regulation and Implementation strategy for Renewable Energy Certificates in India”, India Infrastructure Report 2010, Oxford Univ. Press, <https://ssrn.com/abstract=3440253>

² Singh A. 2009, “A Market for Renewable Energy Credits in the Indian power sector”, Renewable and Sustainable Energy Reviews: 643-652. <https://doi.org/10.1016/j.rser.2007.10.011>



short-term solution, improvement in the target setting framework remains the primary solution.

Setting of floor price or forbearance price are short-term solutions for price fluctuation. As an alternate to setting a floor price, a CCC Market Stability Reserve may be set up in line with similar experience with the European Union Emission Trading Scheme ((EU-ETS). Such stability reserve, can initially be funded by the government, and be made good with a small levy whenever prices are above a target level.

The Carbon Credit Trading Scheme, 2023, notified on 28th June 2023, empowers the Bureau of Energy Efficiency (BEE) as the administrator of the scheme. **Its functions include development of a market stability mechanism for carbon credits. Given the provision for such a mechanism, the need for setting a separate floor price should not arise.** The objectives of such a mechanism would include the need to maintain a range of prices for the CCC and financing required thereof.

10. Bilateral Trade of CCC?: In the proposed regulations, Clause 4 states that *“These regulations shall be applicable to the CCCs offered for transactions on Power Exchange(s), including **contracts** in CCCs as approved by the Commission in accordance with the provisions of the Power Market Regulations.”* (emphasis added)

The above clause seem to suggest that CCC may be traded outside the PXs as well, perhaps in a bilateral manner. Clarification with respect to such contracts should be provided upfront.

11. Single Category of Certificates: In the proposed Clause 8.1 *“CCCs shall be categorized by the Bureau for the obligated and the non-obligated entities.”* Read along with proposed Clause 9.2 *“There shall be **two separate market segments** in the Power Exchanges for dealing in CCCs, namely, Compliance Market for the obligated entities and Offset Market for the non-obligated entities.”* (emphasis added)

The Energy Conservation (Amendment) Act 2022, the Carbon Credit Trading Scheme, 2023 or its amendment issued in 2023 do not envisage multiple types of carbon credits for the types mentioned in the draft regulation.

The draft regulation defines two categories of CCC for the obligation and for the non-obligated entities respectively. Such a categorization would be detrimental to the development of the CCC market in the country. Such differentiation not only would bifurcate and hence reduce liquidity across the two market segments but would leave no incentive for the non-obligated entities to make effort or invest for generating ‘non-obligated’ CCCs. **Such artificial separation would essentially dry out the demand for the ‘non-obligated’ entities and would also raise cost of compliance for the obligated entities who would have limited supply of CCCs. Thus, a single type of CCCs should only be issued and tradable on the power exchanges. This segregation would also raise complexities for potential trading of such certificates in the international market, if enabled later.**

12. ‘Dealing’ in the certification: As per the proposed Clause 9.1 *“Unless otherwise specifically permitted by the Commission by order, the CCCs shall be **dealt** with only through the Power Exchange and not in any other manner.”* (Emphasis added)

The term ‘dealt with’ lacks clarity of its scope. Does it mean more than trading? If not, it should be replaced with ‘trading’. This would also avoid complexity introduced due to the term ‘forum’ included in clause 2.1 of the draft regulation.



13. Dispute Resolution - Role of CERC and the Appellate Tribunal: It is suggested that an Appellant Tribunal must be identified to resolve any issue arising among stakeholders. For example disputes arising from credit seller cease to exist then the contract buyer will have to appeal the breach of contract. Which governing body does the buyer approach? Considering the above stated situation, Registry files a complaint alleging the buyer and seller are sister entities and are buying and selling within themselves. The Appellant tribunal must be set up to overlook upon concerned authority and dispute matters.

The Energy Conservation Act 2001, the Energy Conservation (Amendment) Act 2022, the Carbon Credit Trading Scheme 2023 or its amendment issued in 2023 do not refer to a mechanism for dispute resolution in the context of the CCTS. Given the CERC's jurisdiction over the Carbon Trading Scheme, the Commission should also be empowered to adjudicate upon the disputes arising out of the scheme. Further legislative amendments may be required to ensure that a similar chain of the dispute resolution subsequently flows to the Appellate Tribunal.

14. Timeline for report submission by Power Exchanges: In the proposed Clause 9.10(i) *“The Power Exchanges, shall-*

- i. *send reports for the executed transactions, financial obligation, and all other relevant reports to the respective entities;*
- ii. *report to the Registry, after every dealing session, details of the CCCs transacted by the eligible entities.....”*

A timeline for reporting compliance should be included in the above clause. It is suggested that the Power Exchanges may/must submit the report to respective reporting offices within x hrs from the closing of the trading session.

15. Reporting to the Commission and Market Monitoring: The data related to the CCCs offered for trade, cleared, and banked should be reported to the Commission within one week of the trading session. The scope of the monthly Market Monitoring Report issued by the CERC should also be expanded to include trading in CCCs.

16. Bidding Technique for price discovery: In the proposed clause 11.2 *“The market price of CCC shall be as discovered through the process of bidding at the respective Power Exchange.”*

The above mentioned clause leaves the choice of bidding to the respective Power Exchange. For example, one of the exchange may adopt closed bid auction while the other may choose continuous bidding. To avoid potential for ‘hand held’ and non-competitive trades, closed bid auction should be specified by the Commission. It is noted that recently the Commission has proposed discontinuation of certain types of contracts. Adoption of continuous bidding is one of the reason for the same. The Commission may identify closed bid auction as the preferred approach for price discovery.

17. Typographical Correction: Clause 6.1 may be corrected for typographical error as *“For the purpose of dealing with CCCs issued under the EC Act, 2001, as amended from time to time, the Bureau shall act as the Administrator”*