

SISMATN/ CERC/89A/17/2024

March 06, 2024

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

Sir,

Sub: Public Notice No.RA-14026(11)/1/2023-CERC dated 17.02.2024 inviting comments/ suggestions/ objections from stakeholders on the draft CERC (Terms and Conditions for Tariff determination from Renewable Energy Sources) Regulations, 2024

1. We are an Association of private sector sugar mills in the State of Tamil Nadu. The members of our Association have established 24 bagasse based cogeneration plants in Tamil Nadu with an aggregate installed capacity of 535.50 MW (some of them since ceased) and have vital stakes in tariff determination for renewable energy and the Regulations being considered for notification for this purpose, namely, the Central Electricity Regulatory Commission (Terms and Conditions for Tariff determination from Renewable Energy Sources) Regulations, 2024 – hereinafter mentioned 'The Draft Regulations'. Accordingly we convey our comments, suggestions, objections and submissions in respect of the Draft Regulations and in response to the Public Notice No.RA-14026(11)/1/2023-CERC dated 17.02.2024.

*Request for hearing*

2. We desire to be heard in support of our submissions herein and also in response to the objections/ submissions of others. It is therefore requested that the Hon'ble Commission may kindly grant us sufficient opportunity to make further submissions and also for hearing us exhaustively on all issues.

### Low Tariff for Tamil Nadu

3. The Hon'ble Commission's Regulations for determination of tariff for new and renewable energy sources have a great bearing on State Electricity Regulatory Commissions. In terms of Regulation 4(2) of the Power Procurement from New and Renewable Sources of Energy Regulations, 2008, the Tamil Nadu Electricity Regulatory Commission (TNERC) shall as far as possible be guided by the principles and methodologies specified inter alia by this Hon'ble Commission.
4. Accordingly, the prescriptive provisions in the Draft Regulations are required to be substantively followed by the TNERC while determining the tariff for our members, unless there is compelling logic and justification to depart there from, based on any local special and particular circumstances. In view of this, this Hon'ble Commission is duty bound to lay down principles and methodology that take due care of the legitimate interest of stakeholders across various States and in particular not to create a significant difference in tariff for the bagasse-based cogeneration projects operating in different States under similar and comparable operating conditions.
5. As the determination of the price of bagasse by this Hon'ble Commission is inordinately low and contrary to practical realities, the tariff for the co-generation plants in Tamil Nadu have also been significantly and unfairly low. We have dealt with this in detail in Para 18 to 32 hereunder.

### Definition of biomass

6. Regulation 2(1)(c) defines biomass and it also sets out a list of products that qualify for biomass. We submit for the sake of clarity and completeness, bagasse be expressly included in the list of biomass.

### Treatment for over generation

7. We welcome the pragmatic approach of the Hon'ble Commission in Regulation-11 towards permitting sale of surplus power over normative PLF in the open market subject to the first right of refusal for such excess energy to vest with the concerned beneficiary on payment of applicable full tariff.
8. The Hon'ble Commission is aware that power rates in the open market are volatile from year to year. In order to strike a right balance and assure equity, it is imperative that no party enjoys undue right or benefit. Accordingly, it is necessary to ensure that the right of refusal is not just exercised when open market rates are high, while the power producer gets pushed to market sale when prevailing rates are low.
9. It is accordingly suggested that the right of refusal, when once exercised in any financial year during the tariff period, shall no longer be available except through mutual consent.

### Fixed cost component of Tariff

10. Since our members do not have plans to install cogenerating power plants during the control period under the Draft Regulations, we desire to abstain from expressing views on the fixed cost component of the tariff.
11. Accordingly, our views and submissions herein are confined to various cost component that have a bearing on the cogen plants of our members.

### Control period

12. Regulation 5 provides that the control period under the Draft Regulations shall be from 01.04.2024 to 31.03.2027. It however states that the tariff norms specified in these Regulations shall continue to remain applicable until notification of the revised norms through subsequent re-enactment of these Regulations.

13. It is submitted that the sanctity of the control period shall not normally get disturbed. Timely revision of cost parameters is critical to overall cost recovery (both fixed and variable) within the tariff period. It is hence necessary to expressly state the legislative intent that an extension of control period would be made only under exceptional conditions and on compelling rationale by recording the satisfaction of the Hon'ble Commission to this effect.
  
14. The Draft Regulations clearly provide that tariff norms specified in these Regulations shall continue to remain applicable when control period gets extended. It clearly means and implies that tariff norms shall continue to be followed, while only fresh norms, if any, would alone await new notification. When extant tariff norms for example provide for an annual percentage based increase in bagasse price, it being the tariff norm, the annual cost escalation has to be allowed during the extension of control period as well. This has however not been followed when control period was extended beyond March 2023, thereby depriving cogenerating units of the legitimate increase in bagasse price for FY 2023-24. We therefore suggest that there shall be an express statement of intent that having regard to the continuing tariff norms, all applicable inflationary cost rise prescribed under these tariff regulations shall automatically apply.

#### Rebate and LPS

15. The Draft Regulations propose different rates of rebates and LPS based on the time within which payment is made as under:
  - Payment < 5 days : 1.5% rebate
  - Payment >5 & <30 days: 1% rebate
  - Payment between >30 & <45 days: No rebate - No LPS
  - Payment >45 days – LPS as per Rules.

16. Under this structure, there is neither additional incentive nor penalty for making the payment between the 6<sup>th</sup> and 29<sup>th</sup> day as well as between 31<sup>st</sup> and 45<sup>th</sup> day. For example, whether payment is made on 6<sup>th</sup> or 29<sup>th</sup> day, the rebate is 1% and obviously payment will occur only on the 29<sup>th</sup> day. The in-between period virtually turn 'dry dates' for realizing any amount for the power supplied.
17. It is therefore suggested that a uniform rebate of 3.33 bps (being pro rata interest component per day) be allowed and reckoned for each day of payment made prior the '45-day' credit period from the date of presentation of bills.

Price for bagasse

18. We observe that the price assumed for bagasse has been considerably lower for Tamil Nadu as compared to other major sugarcane/ sugar producing regions:

(Rs/ MT)

State	Draft Regulation 2024
Maharashtra	3152
Uttar Pradesh	2509
Tamil Nadu	2423
Other States	2723

19. It appears that the Hon'ble Commission in its RE Tariff Regulations 2009 computed the fuel price of bagasse for respective States for the base year 2009-10 on 'equivalent heat value' approach for landed cost of coal for thermal stations and thereafter an annual increase thereon is being applied every year mechanically.
20. It is respectfully submitted that the Hon'ble Commission has already endorsed the principle that bagasse is a by-product in the sugar industry and it also has alternative uses like in paper industry.

21. The Hon'ble APTEL in our own case, i.e. South Indian Sugar Mills Association & Others vs. Tamil Nadu Electricity Regulation Commission in Appeal No.199 of 2012 by its Order dated 04-09-2013 in specific terms upheld the principle of this Hon'ble Commission's Regulations on fuel cost pricing based on the equivalent heat value methodology.
22. The Hon'ble APTEL in Appeal No.199 of 2012 ordered on 04.09.2013 has upheld the principle of 'equivalent heat value' as advanced by the CERC in tariff setting principles. The relevant extracts of the judgment are set out below:

*"51. It is important to notice that the Central Commission had specifically observed in the Statement of Reasons that the respective State Commissions may consider the prevalent price of Bagasse if the same is higher than the price on equivalent heat value basis..."*

*55. It cannot be disputed that the State Commission ought to have determined the fuel price on the basis of equivalent heat value method with coal as available to the generating plants or on the basis of market price of bagasse..."*

*56. It is well known that Bagasse has several uses and that it is saleable in the open market. Even the CERC explanatory memorandum for the 2012 Regulations explicitly states so. If the Bagasse is not used by the Sugar Mills in the power generation, it would be sold and it will fetch revenue at the market price. That revenue which is foregone when the Bagasse is used for power generation is cost to the sugar mill and consequently it is the cost of the input for power generation.*

*57. In view of the above discussions, the Fuel Price fixed is not in accordance with the principles as referred to in the State Commission's Regulations as well as the Central Commission's Regulations. In this Appeal, the Appellants have prayed for fixing the Fuel Cost at Rs. 2085/MT on the basis of the Fuel equivalent cost of the coal or in the alternative, fix the Bagasse price on the equivalent heat value methodology taking an appropriate cost of imported coal and in any case the Fuel Cost should not be below Rs.1408/MT with an annual escalation of 5%."*

23. While the Hon'ble Commission in its Tariff Regulations has considered fuel cost based on landed cost of coal for thermal stations, it is respectfully submitted that linkage coal, as available to thermal power stations, is not available to the cogenerating plants. If the cogenerating plants were to run on coal, only imported coal has to be used.
24. Sometimes, sporadically and inconsistently, indigenous coal of poor grade and quality and in insufficient quantities is available on e-auction basis. It is hence imperative that the Hon'ble Commission takes a pragmatic view based on ground realities and ought to consider the cost of imported coal for the cogenerating units for applying the equivalent heat value method.
25. This Hon'ble Commission has further specifically observed in the Statement of Reasons for the 2012 Regulations that the State Commission may consider the prevalent price of bagasse, if the same is higher than the price on equivalent heat value basis. Thus the Hon'ble Commission has consistently recognized the cardinal principle to determine the price for bagasse having regard to the equivalent heat value approach or in the alternative or the prevailing price for bagasse in the market, whichever is higher.
26. Pursuant to above stated principle of the Hon'ble Commission in fixing the price for bagasse, we desire to furnish herein below the details and documentary support for the cost of coal and market price of bagasse and request the Hon'ble Commission to take these latest and actual figures into consideration while fixing the price for bagasse for FY 2024-25 instead of mechanically applying an increase over last year's price.
27. Having regard to the above, we wish to set forth below the particulars of the quantities, quality and cost of imported coal consumed by M/s. Ponni Sugars (Erode) Limited, a member of our Association, for the latest financial year 2022-2023 and the equivalent bagasse value in terms of the equivalent heat value method.

**Month-wise Coal consumed and related Calorific Value  
and price of Bagasse on Equivalent Heat Value Method  
From April 2022 to March 2023**

Month	Qty (M.T)	Cost Rs/t	Total Value (Rs)	AV GCV	GCV Bagasse	Eq.Value for Bagasse (Rs/t)	Boiler Efficiency on Coal %	Boiler Efficiency on Bagasse %	Eq.Bagasse value (Rs/t)
Apr-22	790	14827	11717112	4752	2227	6948	80	71	6167
May-22	397	15053	5980225	4802	2167	6792	80	71	6028
Jun-22	314	14577	4583545	4818	2098	6348	80	71	5634
Jul-22	775	14260	11051346	4832	2154	6356	80	71	5641
Aug-22	738	14325	10572507	4875	2167	6366	80	71	5650
Sep-22	962	14628	14076361	4852	2201	6635	80	71	5888
Oct-22	632	14343	9065212	4796	2170	6489	80	71	5759
Nov-22	1078	13686	14751200	4847	2159	6096	80	71	5410
Dec-22	1481	13390	19835944	4772	2190	6144	80	71	5453
Jan-23	1148	13390	15367167	4800	2205	6150	80	71	5458
Feb-23	1267	12837	16267555	4849	2212	5857	80	71	5198
Mar-23	1401	12630	17692104	4865	2194	5697	80	71	5056
<b>Average</b>	<b>10984</b>	<b>13743</b>	<b>150960277</b>	<b>4822</b>	<b>2186</b>	<b>6231</b>	<b>80</b>	<b>71</b>	<b>5530</b>

28. It may thus be observed from the above that the weighted average cost of bagasse on the equivalent heat value method is Rs.5530/ MT for FY 2022-23. Annual applicable escalation factor shall be applied for FY 2023-24 and FY 2024-25 on this to determine the fuel cost for FY 2024-25.



29. Further, the price for bagasse during financial year 2022-23 in respect of bagasse procurement by Tamil Nadu Newsprint and Papers Ltd (TNPL), a Government of Tamil Nadu undertaking, should justifiably serve the purpose of arriving at an unbiased and objective market price for bagasse. The said TNPL besides procuring bagasse from co-operative sugar mills in the State also buys from private sector mills. In this connection, we wish to submit that one of our members namely, Ponni Sugars (Erode) Ltd has been issued purchase orders by the said TNPL and in turn the actual sale to TNPL is at the weighted average price of Rs.4220/ MT as detailed below:

**Details of Bagasse sold by Ponni Sugars to TNPL during FY 2022-23**

S. No	TNPL Order No. & Date	Order Qty (t)	Sale Qty(t)	Rate (Rs/t)	Amount (Rs lakhs)
1	FAC-MAT-PUR/222315002689 Dt 29/06/2022	25000	24659	4150	1023
2	FAC-MAT-PUR/222315006632 Dt 26/10/2022	50000	5244	4550	239
<b>Total</b>		75000	29903	4220	1262

A copy of the purchase order issued by TNPL is attached hereto and marked as **Annexure –1**.

TN bagasse price unjustifiably lower

30. It is further observed that the bagasse price fixed for Tamil Nadu is considerably lower as compared to the other major regions viz. Maharashtra, Karnataka and UP as set out in Para 18 above. While sugarcane crushed by mills and consequently bagasse availability in these States are considerably higher as compared to Tamil Nadu, it defies logic and basic economics that bagasse price is considered at lower rate for Tamil Nadu in total disregard of demand-supply equilibrium.

### Sugarcane crushed by sugar mills (lakh tonnes)

State	2017-18	2018-19	2019-20	2020-21	2021-22	2022-23
UP	1111.90	1031.67	1119.38	1026.36	1016.26	1099.32
Mah	953.60	951.54	547.10	1014.43	1322.31	1056.80
Kar	354.27	412.70	351.65	455.78	625.61	610.35
TN	82.40	108.54	92.21	97.85	138.16	160.54

As a matter of fact, sugarcane crushed by Tamil Nadu sugar mills has declined steeply from the peak of 253 lakh tonnes in 2011-12 and the capacity utilization by TN sugar mills is now around 50 to 60% only. As a result, bagasse availability is low that commands a higher price in the open market, as evidenced by the purchase price of TNPL, a State Government undertaking. It is grossly unjust and inequitable to fix bagasse price for Tamil Nadu lower than States like Maharashtra, Karnataka and UP.

31. It is further submitted that Karnataka is grouped under 'Other States' while Tamil Nadu that produces about one-third of Karnataka in relative terms figures separately with a lower bagasse price. In the least, the bagasse price for Tamil Nadu shall not be lower than that fixed for Karnataka that is grouped under 'Other States'.
32. It is accordingly submitted that fuel cost for FY 2024-25 shall be (a) based on equivalent heat value at Rs.5530/ MT (b) but not below Rs.4220/ MT being the market price for bagasse for FY 2022-23 (c) these shall further be subject to annual escalation for FY 2023-24 and 2024-25 to arrive at the bagasse price for FY 2024-25.

Annual escalation for fuel cost

33. The Hon'ble Commission in its 2020 Tariff Regulations had allowed annual escalation for O & M expenses @ 3.84% [vide Para 19(2)]. Having regard to the inflationary trend in the country, the Hon'ble Commission in the proposed draft has increased the escalation rate at 5.89% per annum.
34. However, for no explicable rationale, the annual escalation rate has been brought down in the case of fuel cost. While normative escalation factor of 5% per annum was provided for fuel cost in the 2020 Regulations vide Para 44, it has been brought down to 3.45% per annum in the proposed draft vide Para 44.
35. In fact, fuel cost has been more volatile that vitally impacts viability of power generation. Fuel being the dominant part of variable cost would require timely and adequate compensation for overall cost recovery within the tariff period. In the absence of empirical data and compelling rationale, we submit that normative fuel cost escalation shall continue to be maintained at 5% per annum.
36. We would furnish any additional information/ clarification that the Hon'ble Commission may require, given reasonable opportunity and time. It is once again most respectfully submitted that this Hon'ble Commission may give an opportunity for personal hearing and feel justifiably compelled to fix tariff for Tamil Nadu upon due consideration of factors mentioned hereinabove.

Thanking you,  
Yours faithfully,

SECRETARY