

RAJASTHAN ELECTRICITY REGULATORY COMMISSION, JAIPUR

Suo-Motu

Coram: Sh. Shreemat Pandey, Chairman
Sh. S.C.Dinkar, Member
Sh. Prithvi Raj, Member

Date:5.03.2019

In the matter of

Draft Rajasthan Electricity Regulatory Commission (Renewable Energy Certificate and Renewable Purchase Obligation Compliance Framework) (Third Amendment) Regulations, 2019.

Memo on Statement of Objects & Reasons and consideration of comments/ suggestions received from various stakeholders:

1. Commission has notified the RERC (Renewable Energy Certificate and Renewable Purchase Obligation Compliance Framework) Regulations, 2010 (hereinafter referred to as the 'RERC REC Regulations 2010') vide which Renewable Energy Certificate (REC) Mechanism has been introduced in the State. The Mechanism, among other things, provide for pricing and purchase under REC mechanism.
2. The RE generator registered under REC mechanism may exchange the environmental attribute in the form of REC and sell the electricity component to the Discoms at the Pooled Cost of Power Purchase ('pooled cost') notified by the Electricity Regulatory Commission for each year envisaged under the Regulation 10(2) of the RERC REC Regulations 2010. Alternatively, this electricity component can also be sold by the RE generator to an open access consumer at a mutually agreed price or may use for captive purpose. Apart from above, the basic option of selling RE as a generating company to the Discoms at a tariff determined by the Electricity Regulatory Commission is also available.
3. At that time of notification of the RERC REC Regulations 2010, there was a huge difference between the price of renewable energy and conventional electrical power. Now due to unprecedented fall in prices of green energy, the Discoms have refused to extend the Power Purchase Agreements (PPAs) with the

wind and solar projects set up under REC mechanism and such projects are facing challenges.

4. It is noticed that wind and solar energy is becoming available at reduced rates as evident from recent auctions/bidding. The REC Mechanism is operative since 2010 and most of RE projects registered under it have not even completed 10 years, purported to be the time period for the repayment of loans availed by them in setting up their projects. In such a situation, a way out has to be found out such that these projects may continue to operate till their useful life and at the same time the Discoms do not get overburdened.
5. It is observed that the proviso to the Regulation 10 to the RERC REC Regulations 2010 provides that with the progressive development of the electricity sector, the pricing methodologies for electricity component and REC shall be reviewed at periodic intervals as may be considered appropriate by the Commission.
6. In view of the above, Commission considered it appropriate that pricing and purchase under REC mechanism may be reviewed. Accordingly, the following Amendment Regulations have been proposed:

*Draft Rajasthan Electricity Regulatory Commission
(Renewable Energy Certificate and Renewable Purchase
Obligation Compliance Framework) (Third Amendment)
Regulations, 2019*

7. As required under the Electricity (Procedure for Previous Publication) Rules, 2005, the public notices inviting comments/suggestions from the persons likely to be affected were published in the following newspapers on the date mentioned against each of them:

1.	Dainik Bhaskar (All Rajasthan)	1.02.2019
2.	Rajasthan Patrika (All Rajasthan)	1.02.2019
3.	The Times of India	1.02.2019

The draft Regulations along with Explanatory Memorandum were also placed on the website of the Commission. The last date of receipt of comments/ suggestions was 25.02.2019.

8. The Commission has received Eighty Three (83) comments from stakeholders. Commission has considered all the suggestions/comments including those received late and oral submissions made during the hearing. The list of the persons who have submitted their suggestions/comments is placed at **Annexure – I.**
9. In the order the Commission's proposal, the broad issues raised through the comments/suggestions and Commission's analysis and decision thereon is as follows:

Commission's Proposal:

10. Commission has proposed the following Amendments:

(1) Amendment in Regulation 10 of the Principal Regulations:

The sub-regulation (2) & sub-regulation (4) of the Regulation 10 of the Principal Regulations shall be substituted as under:

“(2) The effective electricity component price applicable w.e.f. 1.04.2019 to the projects commissioned upto 31.03.2019 shall be as under:

The electricity component price of energy supplied by an RE project to distribution Licensee(s) shall be Rs 2.67/unit. This rate shall remain applicable for its remaining useful life, for which PPA shall be extended accordingly.

Provided that such projects may also use such electricity for self-consumption or sell electricity at mutually agreed price to other entities.”

“(4) Purchase of electricity component from the Renewable Energy having been issued REC would not be counted in fulfillment of RPO.”

(2) Amendment in Regulation 11 of the Principal Regulations:

The Regulation 11 of the principal Regulations shall be deleted.

- (3) Amendment in Regulation 12 of the Principal Regulations:**
- (A) The heading of sub-regulation 12 shall be substituted as under:
**“12. Pricing options for Renewable Energy projects –
Opting out of REC mechanism after 01.04.2019”**
- (B) The sub-regulation (1) of the Regulation 12 of the Principal Regulations shall be substituted as under:
“ *In case RE generator under REC mechanism wishes to opt out for REC mechanism and if the Discoms agree to purchase the renewable energy they may extend the PPA at the tariff not exceeding Rs 3.17/unit for remaining useful life of the plant and in such case the electricity purchased would be counted towards fulfilment of RPO and RE Generator would not be entitled to REC Certificate.*
- Provided that above provision of the regulation shall not be applicable to an entity whose accreditation/registration has been revoked by the State / Central Agency.”*
- (C) The sub-regulation (2) of the Regulation 12 of the Principal Regulations shall be deleted.

Comments/Suggestions received:

11. The following comments/suggestions have been received:

- (1) The investment has been made with definite rate of return for the investment with high borrowings from the various institutions. Any change in income that too less than the feed-in-tariff prevailed at that point of time would not have made these investors to go ahead with generation from these investments itself and alternatively choose to have the Feed-in-Tariff itself.
- (2) A few developers submitted that the Draft amendment proposal under such scheme is great relief for investor. They would like to opt out the REC framework and like to go for Rs 3.17/- fixed for life time because for REC, still there are lots of uncertainty and is market dependent. Their view is to extend their PPA without REC with fixed Rs 3.17 for life time

of the projects.

- (3) Investments have been made in the project based on a certain revenue forecast under pooled cost (also referred as APPC by stakeholders)+REC sale. It is not justified to compare tariff for current period with the earlier period during which the subject project had been commissioned as capital cost along with technology is different in both times.
- (4) Tariff may not be compared with auctions as large capacity plant have certain advantages in terms of cheaper funds. Govt. subsidies like land acquisition, interstate transmission charges & losses, GBI, improved security mechanism etc.
- (5) Introducing the lowest pooled cost with effect from FY 2019-20 on the projects commissioned in the year FY 2011-12 limits the IRR in the range of 10%-12% compared to FIT mechanism of achieving 13.28% IRR. The low IRR not only limits the developers profit but also restricts the generator to meet the operational cost and debt service obligation, as it has not completed the tariff period.
- (6) REC mechanism is a national mechanism implemented as per CERC regulations and RERC has adopted it. Therefore, RERC cannot change its basic object. Framework at State level regarding REC should not be inconsistent with CERC.
- (7) Initially the revenue for REC projects was less than FIT projects. The same is expected to increase with increase in pooled cost. However, With Rs 2.67/kWh projects will become unviable and NPA.
- (8) Discom deficit in meeting solar RPO require additional solar generation capacity of 933 MW or more which is more than capacity under REC mechanism.
- (9) Discoms should extend PPA to meet their RPO. They may be liable for payment of surcharge of Rs 3.59/kWh per kWh of shortfall. Even if they buy RECs to meet their RPO requirement, it would involve at least Re 1 per kWh. Still they

are not willing to allow reasonable and sustainable tariff the REC projects.

- (10) RE tariff be fixed as the lowest of rates discovered under the competitive bidding framework in the nation for next three years. After three years the same may be revisited and revised considering new development and trends of prices discovered with them.
- (11) Commission has to determine the tariff from now onwards on the basis of CoD of the generating plants, taking note of the returns which have already accrued to the RE generators. For balance period of next 20-25 years or so. Commission should determine levelled tariff under preferential tariff mechanism based on investment level of each generators in a particular year. Commission can calibrate the tariff based on the investment level of each year.
- (12) Even if fresh competitive bids are invited for RPO fulfilment, such projects will take anywhere between 18-20 months to come up. Thus expecting such projects to meet immediate RPO requirements would not be practical. Instead, Discoms should facilitate PPA with existing projects who were earlier under REC route and currently is intending to tie up with Discom on immediate basis. This will be a win-win situation for the Discom as they could meet the RPO in a timely manner through actual non-Solar RE purchase. Commission may continue with the existing regime in determining the tariff for the projects wishing to opt out of REC Mechanism, so that the power plants can complete the useful life and at the same time it also helps the DISCOMs to fulfill RPO targets as well.
- (13) In regulation 10 the proposed amendment should have clear stipulation that such plants shall remain qualified for REC certificate and sale thereof for its remaining life.
- (14) A clarification is suggested added in the' proposed amendment. All such plants who are not willing to sale

power to Discom wider regulation 10 or regulation 12 and are interested in third party sale or in captive mode of sale, the permission to switch on to third party sale or in captive mode as the case may be shall be promptly granted. On a request made to the Discoms in whose area the power is proposed to be sold/consumed. Clarification is also suggested to be included that such plant shall have right to sale to Discom under amendment regulation 12 despite RPO limits. The discretion should be of plant owner and not Discom.

- (15) The Discom/RUVNL are obligated to effect such power purchase and protect the investment incurred by the project owners.
- (16) One cannot pick up the brown energy rate of one year and ignore the green energy rate of that year.
- (17) The cost of RECs also has to be added to Rs. 2.67 while computing the so-called "lowest rate". The proposed tariff of Rs 2.67 per unit is substantially lower than the preferential tariff determined for wind plant commission so far.
- (18) This power of review, under Regulation 10, however, does not empower to take away the vested rights of RE generators to switch over to preferential tariff as provided under Regulations 12 of the principal Regulation of 2010.
- (19) Under the proposed amendments of Regulators, the rights of the RE Generators who wished to opt out of REC mechanism are dependent on the discretion of the Discoms. The proposed amendment not only confers discretion on the Discoms but also fixes the upper limit/maximum tariff for the remaining useful life of the plant. It places the Discoms in dominant position, abuse of which shall compel the RE generators to sell the electricity at tariff unilaterally decided by Discoms which in turn shall result into closure of the plants.
- (20) In view of the fact that APPC is Rs. 3.53 /kWh at National Level (determined by CERC), and Rs. 3.69 /kWh at State

Level (determined by this Commission) vide order dated 11.04.2018, there is no justification to adopt Rs. 2.67 /kWh being the APPC in the year 2012-13. The proposed rate of Rs.2.67 picked up being the lowest pool rate cannot be the basis of any tariff determination under the Electricity Act or ' the Regulations made there under. It is therefore requested to adopt the APPC as may be determined by the Commission for the financial year 2018-19.

- (21) The prices discovered in the recent bids are not one time exception but represent the changes in the industry.
- (22) Proviso to regulation 10 is for future projects and not for the projects already Commissioned and PPA signed. Benefit of reduced capital cost may be passed to the consumers but not for past projects.
- (23) The wind project under REC mechanism were set up under the wind Policy 2012 of Govt. of Rajasthan and as clauses 4.3, 5, 5.3 and 7.3 of the policy itself mandate the procurement of power from wind plants even beyond the RPO obligation and the power procured under REC mechanism is to be procured @ APPC as determined by the Commission from time to time.
- (24) RECs are tradable instrument, the price variation takes place within the floor price and forbearance price. Accordingly, the tariff need to be varied dynamically based on the price discovered for the RECs in the power exchanges.
- (25) Rajasthan Discoms have failed' to meet RPO and Commission vide its order dated 14.11.2017 on petition no. RERC-867/116 has directed them to make up the shortfall in 5 years as per said order the RPO deficit for FY16-17 for solar energy was 1.35% (2.5%-1.15%).Solar generation capacity during that year was 849.75 MW. Accordingly, this deficit required additional solar generation capacity of 966 MW much more than that under REC mechanism projects. RPO (solar) during subsequent years is higher. Thus Discoms can accommodate all REC mechanism solar projects to meet

their RPO requirement. We here propose tariff of at least Rs 3.67 per unit instead of 3.17 per unit as proposed in the draft regulations.

- (26) Tariff of Rs 3.17/unit determined by the Commission is not financially viable. The project were commissioned when tariff was 4.08/unit and all calculation & project viability was based on 4.08/-Commission should fix the tariff of Rs 4.08/unit for remaining life of projects opting out of REC mechanism after 01-04-2019.
- (27) In view of prevalent feed - in or competitive bidding tariff. Rajasthan sites having lower wind potential, offering low tariff is highly illogical. It is against the provisions of section 61 of the Electricity Act 2003(b) of the generation conducted on commercial principles and of safeguarding of consumers' interest & at the same time recovery of the cost of electricity in a reasonable manner.
- (28) If all REC mechanism projects closes down then equivalent electrical energy will have to be purchased by the discoms from other conventional generation sources which in all probability will be higher than average pooled power purchase cost (APPC). Thus offering very low and non-remunerative tariff to REC mechanism based project will not only go against policy of promoting RE generation but will not be beneficial to Discom also. In view of this tariff based on APPC+ will be in the interest of both solar generators, discoms (and hence the consumers).
- (29) The Solar project set up under REC scheme provide various advantages to STU/State Discom vis-a- vis any thermal station installed in Rajasthan such as saving in transmission losses, environment friendly generation of employment in rural areas etc.,
- (30) A Government Policy cannot be changed for the RE generators who have already put their plants and invested the money for the development of Rajasthan. if this principle of Tariff is changed then legal status of all the PPAs will be at stake.

- (31) It is unjustified to equate the cost of power generated by the plant set up in 2011-12 with the plant set up in 2017-18. This is also violating of article 14 of the Constitution of India as unequal's are being treated as equals. It is a known fact that the cost of establishing Solar plants is coming down every year and a plant set up 8-9 years ago on the promise of State Government cannot be equated with the plant set up today.
- (32) Commission failed to appreciate that proposed amendment violates Article 19(1) (g) of the Constitution of India since it denies the right of trade to the Petitioner and all other Solar Power Developers because many will become NPAs with the abrupt reduction in power prices.
- (33) The proposed pricing is completely contrary to the objects of the Electricity Act 2003. Continue the present system fixing the electricity component price at Pooled Cost of Power Purchase for remaining useful life of project and PPA to be extended accordingly.
- (34) Tariff of Rs.2.83/unit discovered in the recent SECI bidding incidentally is for either Gujarat or Tamil Nadu sites which are at least 25% better in terms of PLF. In any case, all of these projects are for commissioning in 2021 and having WTGs of most recent technology. Even the current technology turbines with higher hub height and rotor-dia are 40% better than the WTGs of the time when we commissioned the REC projects in Rajasthan.
- (35) The proposed regulations are not in compliance with the mandate of section 86(1)(e) of the Electricity Act, 2003. The proposed regulations are inconsistent with the express provisions of Regulations 5(1)© of the CERC. Any deviation from the pooled power purchase cost as provided in Regulation 10 of the Principal Regulations is at variance with the CERC REC Regulations and therefore, not sustainable in law.
- (36) Regulatory certainty, stability and predictability are vital for

the health and stability of renewable projects and for stakeholders to arrange their affairs. The Supreme Court in *Vodafone International Holdings B. V. v. Union of India (UOI) and Ors. J* (para 91, 95,147) recognizes that: "Certainty is integral to. Rule of law. Certainty and stability form the basic foundation of any fiscal system.[..... .] Certainty in law.... is of prime importance ... so that investors can arrange their affairs fruitfully and effectively [.... .]Lack of proper regulatory laws, leads to uncertainty and passing inconsistent orders by Courts, Tribunals and other forums, putting Revenue and tax payers at bay."

- (37) Regulatory Impact Assessment must be carried out within a guided framework to analyses the impact of regulatory decisions on policy objectives, long term stability of renewable energy projects and sectoral growth. Seen in this light, it is important to note that the Capacity Utilization Factor (CUF) in Rajasthan is below estimates and reduced tariff is already adversely affecting the estimated revenue stream. Any further decrease in tariff and termination of PPA would therefore create huge uncertainty and immitigable risk on public investment already made.

Recovery from APPC+REC

- (38) Investors have made less revenue than the revenue from the feed in tariff category investors in past years due to (i) inherent time lag between month of generation and issuance of REC as per the procedure of issuance of RECs and thereafter offering RECs for sale (ii) REC sales during initial years being poor as reflected by annual sales in Indian Energy Exchange and floor price determined by CERC,.i.e., reduction from Rs 1500/REC (Rs 1.50/kWh) in FY 2011-12 to Rs 1000/REC(Rs 1.00/kWh) during FY 2016-17, which are lower than the feed-in-tariff of Rs 5.12/kWh and Rs 5.16/kWh respectively and average realisation of projects commissioned in FY 2012-13 is less than feed-in-tariff of Rs 4.89/kWh. More than 84% projects have been commissioned from FY 2012-13 onwards.
- (39) The Gross revenue for projects under REC mechanism are not yet getting matched with the revenue for the projects under FIT category. The projects under REC mechanism

have lost huge revenue from the projected income and making delayed payment to lenders. The following table shows APPC for REC wind power projects along with REC rate and Feed in tariff for the projects commissioned during the year:

Year (A)	Gross revenue for REC projects			Approved Feed in Tariff for wind projects commissioned during the FY (E)
	APPC JdVVNL (B)	REC (Average rate for the year)* (C)	Total Gross Revenue (D)=(B+C)	
2012-13	2.6713	2.127	4.798	4.89
2013-14	3.0865	1.500	4.586	5.12
2014-15	3.5360	1.500	5.036	5.64
2015-16	3.4012	1.500	4.901	5.14
2016-17	3.4332	1.450	4.883	5.16
2017-18 (Upto Sep'18)	3.6914	1.240	4.935	4.87
	Average from FY 2012-13		4.8565	

These investors are at least to be safeguarded with revenue rate of Feed-in-Tariff prevailed at the time of their commissioning.

- (40) If projects are allowed to continue under REC mechanism and the proposal is considered, these projects will get only Rs 3.67/kWh (Rs 2.67/kWh and Rs 1.0 from REC). If the floor price of REC got reduced further, the revenue for these projects will be lower than Rs 3.67/kWh. The proposed minimum pooled purchase rate of Rs 2.67/kWh based on lowest of last seven years rate is very low. If the proposal of the staff paper is considered, these projects will get only Rs 4.17/kWh (Rs 2.67 as APPC and Rs 1.5 from REC).
- (41) In case APPC is to be capped under APPC + REC off take model, the same may be capped at Rs 3.69/unit - the applicable APPC for the last year. This should continue as fixed APPC component for the rest of the useful life of the project for which PPA is extended.

- (42) It is suggested that for meeting the viability of such projects who wants to opt out of REC and tie up directly with Discom should be given at least a tariff of 4.69 Rs/Unit (2017-18 APPC+REC) which may be specified as the minimum price for purchasing wind power from such projects by Discoms.
- (43) Even with current level of pooled cost of Rs 3.69/unit and REC at floor price of Rs 1.00/unit, there is net loss of Rs. 1.87/unit. The sub-regulation (2) & sub-regulation (4) of the Regulation 10 of the principal Regulations shall be substituted as under:
- “(2) The effective component price applicable w.e.f 01.04.2019 to the projects commission upto 31.03.2014 shall be pool cost of power and their after upto 31.03.2019 shall be Rs 3.50/unit.”*
- (44) PPA should be extended by the discoms under REC mechanism and tariff may be frozen @ current year APPC for the balanced life of the plant.
- (45) The tariff of Rs 2.67/unit proposed as APPC for FY 2012-13 considering the NPV method which is based on time value of money, the tariff Rs 2.67/unit in 2012-13 would work out to an inflation adjusted (considering inflation of 5% per annum) tariff of Rs 3.5751/unit for the FY 2018-19. So tariff of electricity component of power sold to Discoms be revised to Rs 3.5781/unit.
- (46) For tenure of the plant the levelled tariff of the project calculated as Rs 5.40 per kWh whereas for wind farms located in Jaisalmer, Jodhpur and Barmer districts notified by RERC for 2016-17 was Rs 5.76/kWh. Investment /return on equity could be retrieved through APPC of Rs 3.40/kWh, REC @Rs 1.0/kWh and GBI (only for 10 years) @ 0.50/kWh with an expectation of increase in APPC in future. The situation has been further aggravated as the annual generation from the Project is about 70-75 MU as compared to 94.25 MU envisaged at the time of setting up of the Project due to various reasons including backing down instruction by SLDC . With generation of 75 MU, the

levellised tariff comes out to Rs 6.64/kWh, which cannot be recovered even with existing APPC of Rs 3.69/kWh , REC @Rs 1.0/kWh and GBI (only for 10 years)@ Rs 0.50/kWh.

- (47) Looking at the current reduced tariffs the Commission may kindly specify tariff of current APPC year i.e., Rs 3.67 per unit may be fixed for remaining useful life of the plants.
- (48) The investments to these projects, with high borrowings from the various financial institutions, have been made with anticipated definite rate of return based on long term projections of APPC. These investors choose to go ahead with the REC mechanism which looked attractive than the prevailing Feed in Tariff on account of REC projects notionally having electrical and RE components with electrical component saleable at APPC to Discom of the area (and likely to have escalations) and RE component in the form of RE certificate (1 REC for 1000 kWh injected) saleable in power exchange at a rate not below floor price determined by CERC. These investors have made less revenue than the revenue from the feed in tariff category investors in the past years. This is on account of (i) inherent time lag between month of generation and issuance of REC as per the procedure of issuance of RECs and thereafter offering RECs for sale, (ii) REC sales during initial years being poor as reflected by the annual sales in Indian energy exchange vide table given below) and (iii) floor price determined by CERC having undergone reduction from Rs.3900 per REC in FY10-11 to Rs.1500 per REC (i.e., Rs.1.50 per kWh) in FY 11 - 12 to FY 16-17 to Rs. 1000 per REC (i.e., Rs, 1.00 per kWh) from FY 17- 18.
- (49) Specifying of ceiling tariff is not the determination of tariff by the Commission as envisaged in the Electricity Act. Commission may consider project specific tariff determination subject to ceiling of levellised tariff as determined by the Commission for the project commissioned during the year of Commissioning. In the meantime, PPA may kindly be directed to be extended under REC mechanism with option 10 generators to migrate to IPP mode later at project specific tariff not

exceeding Feed in Tariff determined under section 62.

- (50) All thermal plants are generating energy which is equivalent to energy of RE generator. Tariff of Thermal energy purchased is higher than that of Pool Price. If Discom can purchase thermal energy higher than that of pool rate then why RE generator is denied to sale energy part at pool price otherwise this will create disparity which is not acceptable under law of Justice.
- (51) In order to safeguard the interest of the developer as well as the Discom it is proposed and it should definitely be at least the current year APPC during which the PPA is to be extended further for remaining life of the project. Same may be continued for the balance life of the project. In this case, it is also proposed that, preferential tariff to be allowed to the generators. who are opting out from REC mechanism should be equivalent to the summation of APPC rate decide under Regulation 10(2) and the floor price of Rs 1 /kWh as per CERC.

Govt. Policy

- (52) GoR Policy 2011/2014 provided that for all plants under REC mechanism, power should be purchased at APPC tariff by the Discoms. Therefore, Sovereign promise of the State Govt. may be kept. Commission may consider tariff keeping in view of the sovereign promise of Govt. of Rajasthan for welfare of the investors, looking to heavy investment/loans from banks and also to protect the industry.
- (53) The sprit behind the- provision is that the Rajasthan-Govt. has given a comfort to the Solar. Power' producers - to install, the plants and has, also- given an assurance that the power generated from the Plants shall be purchased by - the, Discoms at pooled cost of power purchase as determined by the commission from time to time.
- (54) Since the life of the plants is 20 -25 years -my action of stopping the power purchase during the plant life by the Discoms would be unfair in view of the Solar Policy of Govt.

Of Rajasthan.

- (55) It will be a natural justice to keep the window open in respect of all such plants which have been installed 'as a consequence of comfort given by the govt. under clause 7.3 the agreement made by the Discoms which have the effect of termination of 'the contract after the termination period and there by stopping the power purchase from such "Plants would not only be unfair but would be against the provision of the policy. This will also amount to breach of the trust and shall be considered as a regressive Measure.
- (56) Government of Rajasthan's policy is sovereign promise to investors of REC mechanism- projects that Rajasthan Discoms shall purchase their power at pooled cost of power purchase and JdVVNL and Rajasthan Urja Vikas Nigam Companies, being Govt. of Rajasthan's companies are not empowered to take action against said sovereign promise, by terminating the PPA.
- (57) No provision for terminal date of PPA and REC mechanism framework is specified in the State Policy and RERC Regulations. The provisions vide regulations 8 of validity of REC framework under RERC REC Reg. to be valid up to 31.3.16, has since been deleted vide Rajasthan Electricity Regulatory Commission (Renewable Energy Certificate and Renewable Purchase Obligation Compliance Framework) (First Amendment) Regulations, 2016 (effective from 1.04.2016). The CERC REC reg. and procedure issued thereon by National Load Despatch Centre ('NLDC') also do not specify any terminal date for REC mechanism. Thus neither Govt. of Rajasthan's policy nor any Regulation specifies terminal date for PPA.
- (58) As per clause 7.3 of Rajasthan Solar Policy 2014 and clause no 4.3 of Rajasthan Solar Policy, 2012 the Discoms. Instrumentally of State are also bound by the Policy laid down by the State and thus are under obligation to purchase electricity from the power producer up to unlimited capacity at pooled cost of power purchase as

determined by the Commission from time to time.

- (59) It is settled principal of law that by way of an amendment, vested rights of party cannot be taken away. At the time of setting up the power plant and entering into PPA , RE generator were given right to have option to switch over to preferential tariff under Regulation 12 of the Principal Regulations,2010. The proposed amendment seeks to take away the said vested right and therefore the same is unconstitutional. The proposed Amendments cannot be made applicable to those RE plants which were set up prior to 01.04.2019.
- (60) The State Govt. Solar/Wind policies were in confirmation of the Principal Regulations, 2010 and the CERC Regulations 2010. The RE generators relying upon the said polices of the State Government and the prevailing Regulations, decided to setup RE Plants as they were assured that the entire electricity would be purchased at pooled cost of power for entire life of the plant under REC Mechanism.
- (61) The projects under the Policy 2011/2014 have been cleared by SLSC (State Level Standing Committee) and nowhere restriction of time period kept.
- (62) Commission has proposed the resolution of the issues of REC generators and Discoms in a balanced manner and the proposed amendment are welcome step.
- (63) Unprecedented situation do occur in execution of any long term policy decision, however it is to the wisdom of the State Govt. to address the unprecedented situation in such a manner that the solution is 'Win-Win' for both the parties and the faith of investors remains intact.
- (64) RERC cannot overrule the Rajasthan Solar Policy 2011/2014 and CERC regulations and modify the tariff principle of scheme which in applicable all around state of India. Any proposed modification in Tariff principle will be applicable to Rajasthan and a disparity will be created with all the other investors in other states of India.

- (65) As per solar policy 2011 and 2014 clause 7.3 all Discoms are legally bound to purchase the energy from RE generator who has put the plant under the REC mechanism. The tariff rate is already decided as pool price to be decided by RERC every year. RE generator are also legally bound to sell their energy at pool rate and they cannot sell the power to third party. It is a Govt. of India Policy framework and started for implementation of RPO. State can very well purchase the REC from REC trading market.
- (66) Government of Rajasthan's policy is sovereign promise to investors of REC mechanism- projects that Rajasthan Discoms shall purchase their power at pooled cost of power purchase and JdVVNL and Rajasthan Urja Vikas Nigam Companies, being Govt. of Rajasthan's companies are not empowered to take action against said sovereign promise, by terminating the PPA.

CERC Regulations

- (67) CERC regulations are still in force and the price for sale of electricity is determined on the basis of the pooled cost of purchase. Hence, there is no occasion for the Hon'ble Commission to make amendment in the Principal Regulations, 2010 which also provides for average pooled cost of purchase. The Discoms should be directed to purchase power from RE generator in terms of Regulation 10 of the Principal Regulation, 2010 for the remaining useful life of the RE projects. The amendment proposed is not warranted.
- (68) The State regulations vest on CERC REC reg 2010 is the regulation. In view of this, RERC regulations cannot deviate from basics of CERC reg. Even otherwise, under see 86(1), CERC regulations are guiding factor. CERC REC reg. 2010 (as per second amendment dated 10th July 2013), vide reg 5(1) (c) has specified that sale of power to distribution licensee under REC mechanism shall be 'at the pooled cost of power purchase of such distribution licensee as determined by the Appropriate Commission. Accordingly, it

is not open to RERC to offer to REC mechanism projects the tariff lower than average pooled cost of power purchase of distribution licensee of Rajasthan.

PPA duration

- (69) Viability of a project is established only when it operates for its useful life. PPA less than useful life of 25 years would make project financially unviable.
- (70) The terms of agreement including period/term are mutually agreed and terminal date of the PPA cannot be decided unilaterally by one party.
- (71) As per Regulation 12 (2) of the RERC REC Regulations, there is no option available to the purchaser (JdVVNL/RUVNL) to terminate the PPA. RERC RE Tariff Regulations have also given clearly option to all REC generators to switch over to preferential tariff, Discoms may be directed to comply with the provision of the regulations.
- (72) Neither GoR Policy nor any CERC/RERC Regulations specify terminal date for PPAs under REC mechanism.
- (73) APPC includes power from other sources also and same is being computed and claimed in the respective ARR. Extending PPA @ APPC rate in any case will not affect the APPC of Discoms.
- (74) Earlier PPAs signed under the operating period until 31.03.2016 with the understanding that validity of the same will be extended upto the envisaged project life. Subsequent Amendment of deletion of operating period meant that the regulations would remain in force till today with clear intention of the Commission that PPA need to be signed on same terms and conditions till operating period of regulations.
- (75) The Discoms order refusing extension of PPA may be stayed till matter is resolved. Switch over of all REC generators to preferential tariff may be permitted by a general direction.

If Discoms object to the tariff committed in the PPAs, Commission could direct that during the transitional period, that the tariff, payable after expiry date of the PPAs, would be as may be finally determined by the Commission under preferential tariff.

- (76) In the original PPA and extensions thereof, it specifically mentioned that "the Terms of Agreement can be mutually reviewed", which includes the period/term of the Agreement. Accordingly, the terminal date of the PPA cannot be decided unilaterally by ne Party signing the PPA (RUVNL). Further, useful life of the project is 25 years. In view of this, stake holder was assured of extension in term of PPA and was to apply for its extension.
- (77) As per the provision of Regulation 12(2) of the RERC Regulation 2010 there is no option to the purchaser (JVNL / RUVNL) to terminate the PPA on 31.03.2019. However the developers/generator on his own can opt out of the REC mechanism.

Protection of investment

- (78) Investment of hundreds of crores of rupees will become infructuous, if the PPAs are not extended for the full plant life of the generating plants. Loans of crores of rupees, borrowed from the Banks will turn into NPAs.
- (79) Many public sector undertakings of the Central Government and the State Government have also set up such RE plants. If these plants are forced to shut down, it would be a huge loss to the State Exchequer. The Discoms cannot discard the larger national and international goals for renewable energy. The earlier PPA executed prior to the proposed amendment, cannot be governed by these proposed amendments.
- (80) Any legislation or subordinate legislation, which is known in advance to be defective and legally unsustainable, creates avoidable disruption and uncertainty. Plethora of judgments of the Hon'ble Supreme Court that except an

act of Parliament or State Legislature, no Rule, Regulation, Order or Circular can be issued with retrospective effect.

(i) *State of Orissa vs. Mangalam Timber Products Ltd.* (2004) 1 SCC 139.

(ii) *Hukum Chand etc. v/s Union of India & Ors.* (1972)2 SCC 601.

(iii) *Bejgam Veeranna Venkata Narasimloo v/s State of Andhra Pradesh* AIR 1998 SC 542.

(iv) *Bakul Cashew Co. and ors. V /s Sales Tax Officer* (1986) 2 SCC 365.

(v) *LML Ltd. vs. State of UP & ors* (2008) 3 see 128.

The fundamental lacuna of retrospective effect in the proposed amendments should be removed.

(81) In the present case, the above principle of promissory estoppel is squarely applicable. In a plethora of judgments, the Hon'ble Supreme Court has laid down that where the State Government has made any promise and the other party has acted upon that and made investment accordingly, the State Government is bound by its promise and it cannot resile from that commitment/assurance. The reference of the following judgments is relevant:

(i) *Moti Lal Padampat Sugar Mills Co. Ltd. Vis State of UP* (1979) 2 SCC pg. 409.

(ii) *In Century Spinning and Manufacturing Company Ltd. and Ors. v. The Ulhasnagar Municipal Council and Ors.* 1970 (1) SCC 582.

(iii) *In Union of India and Ors. v. Indo-Afghan Agencies Ltd.,* MANU/SC/002111967: [1968]2SCR366

(iv) *Union of India (UOI) and Ors. V s. Respondent: Godfrey Philips India Ltd.* (1985) 4 SCC 369

(v) *In Amrit Banaspati Co. Ltd. and Ors. Vs. Respondent: State of Punjab and Ors.* (1992) 2 SCC 411.

(vi) *Delhi Cloth and General Mills Ltd. v. Union of India* MANU/SC/0031 / 1987: [1988] 1 SCR383

(82) It is submitted that GERC vide order dated 01.07.2015 on petition no 1363 of 2013 has ruled that the petitioner (a generator in REC (mechanizing) is eligible to receive the APPC determined by the Commission as per the provisions of the CERC Regulations read with GERC regulations and orders of the CERC and that the tariff at the rate of Rs. 2.64

per unit agreed for a period of 25 years by the parties is illegal and invalid and against the statutory provisions and that the decision shall be applicable to all similarly placed wind generators tariff for REC mechanism projects cannot be other than APPC. Appellate Tribunal of Electricity (APTEL) vide order dated 6-12-18 on appeal no. 209 of 2015 of Gujarat Urja Vikas Nigam Limited has upheld GERCs order dated 01.07.2015.

- (83) Supreme Court Judgment in civil appeal No. 6399 of 2016 dated 25.10.2017 (*GUVNL V/s Solar Semiconductor Power Company India Pvt. Ltd.*) has mentioned that even if the State commission can re-determine the tariff, the State Commission cannot force the licensee or generating company to accept such tariff and continue with the implementation of the PPA on such altered terms.
- (84) RERC REC Reg. 10 has been notified under sections 61, 66, 86(1) (e) of the Electricity Act, 2003. Draft amendment is proposed under sec. 86 of the Electricity Act 2003. The commission under sec. 86(1) (b) of the Electricity Act has function to regulate electricity purchase and procurement process of distribution licensees including the price at which electricity shall be procured from the generating companies and under Sec. 86(1) (e), it is to promote generation of electricity from renewable sources of energy by providing suitable measures for connectivity with the grid and also specify renewable energy purchase obligation. Under these provisions of the electricity Act , Commission can make specific provisions of Discom to extend PPA and can provide regulatory certainty of PPA term to the remaining useful life of the project irrespective of whether a RE generator continues under REC mechanism project or not. In doing so, commission has to balance the interest of discoms as well as of RE generators and guided by the provisions of the Electricity Act and tariff policy and not by economics of discoms. Further, migration of such projects will enable discoms to meet their wind RPO liability. IWPA suggest that commission may specify that the existing power purchase Agreement for the projects under REC mechanism, shall be extended for the remaining useful

life as defined in RERC (Terms and Conditions for Determination of Tariff for Renewable Energy Sources Wind and Solar Energy) Regulations, 2014.

- (85) The CERC and RERC REC reg. 2010 provides for sale of electrical component at Average Pooled cost of Power Purchases (APPC). Further, besides provisions of section 62 and 86, the section 61 of Electricity Act 2003 require the Commission to be guided by the following for the determination of tariff-
- (i) The principles and methodologies specified by the Central Commission for determination of the tariff applicable to generating companies and transmission licensees.
 - (ii) The generation, transmission, distribution and supply of electricity are conducted on commercial principles;
 - (iii) Safeguarding of consumers' interest and at the same time, recovery of the cost of electricity in a reasonable manner;
 - (iv) The promotion of generation of electricity from renewable sources of energy vide sec. 61(J) (h).
 - (v) The National Electricity Policy and tariff policy (vide sec. 61 (J) (i)).

The guiding principles under the Electricity Act and Tariff Policy are statutory in nature and commission can not deviate from these. Proposed amendment ignores the guiding principles that generation is to be conducted on commercial principles and that tariff determined enables generator to recover the cost of electricity in a reasonable manner and also tariff for REC mechanism projects to be the APPC (as per CERC REC reg) or rate of conventional power (vide tariff policy). The proposed minimum pooled purchase rate of Rs.2.67 per kWh based on the lowest of last seven years' APPC is neither of these and is very low.

- (86) Under 86(1)(b)&(e), it is to promote generation from renewable sources of energy by providing suitable measures for Connectivity with the grid and also specify, renewable energy purchase obligation. Under these provisions, Commission can make specific provisions of discern to extend PPA and can provide regulatory certainty of PPA term to the remaining useful life of the

project irrespective of whether it continues under RFC mechanism project or not. It is addition of reg 9A as under:

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"9A. The existing power purchases Agreement for the projects -under REC mechanism, shall be extended on terms and conditions of Reg 10 or Reg. 12 for the remaining useful life as defined to Rajasthan Electricity Regulatory Commission (Terms and Conditions for Determination of Tariff for Renewable Energy Sources Wind and Solar Energy) Regulations, 2014."

- (87) The RERC REC Reg. 10 has been issued under sections 61, 66 (development of-market mechanism), 86(1)(e) of the Electricity Act, 2003. Further, the Govt. of India has notified the revised Tariff Policy on 28th January, 2016. These guiding principles are statutory in nature and commission can not deviate from these. Proposed amendment ignores the guiding principles that generation is to be conducted on commercial principles and -that tariff determined enables generator to recover the cost of electricity in a reasonable manner and also tariff for REC mechanism projects to be the rate of conventional power (vide tariff policy).
- (88) In Cellular Operators Association of India and Ors. vs. Telecom Regulatory Authority of India and Ors. 2 (Para 73), the Supreme Court referred to Corpus Juris Secundum (March 2016 Update) which states:
" ..Although the agency need not address every comment received, it must respond in a reasoned manner to those that raise significant problems, to explain how the agency resolved any significant problems raised by the comments, and to show how that resolution led the agency to the ultimate rule. The agency must articulate a satisfactory explanation for its action, including a rational connection between the facts it found and the choices it made. Under some circumstance, agencies must identify specific studies or data that they rely upon in arriving at their decision to adopt a rule. "
- (89) The Kelkar Committee Report titled "Report of the Committee on Revisiting Revitalizing Public Private

Partnership Model of Infrastructure" supported grant of appropriate relief to power projects facing viability issues due to change in regulations and fall out on fuel prices, which reinstated investor confidence and prevented capacities from becoming stranded. It also highlighted the need to provide upward adjustment of tariffs in sectors where existing tariffs are inadequate to cover the costs of a specified level of service.

The Committee in its recommendations upheld the ultimate aim of the Electricity Act, of balancing the interests of end consumers while also providing reasonable return for investors in the power sector.

- (90) In this context, Section 61 (d) of the Electricity Act 2003 for tariff determination is relevant; it lays down the principle to strike a balance between affordability and viability. The relevant extract is as "*The appropriate commission shall be guided by the following (d) safeguarding of consumers interest and at the same time, recovery of the cost of electricity in a reasonable manner;*"

Rajasthan Discoms have submitted as under:

- (91) The Commission has rightly taken note of the fact that with the progressive development of the electricity sector, the pricing methodologies for electricity component and REC needs to be reviewed at periodic intervals
- (92) The above prices have been suggested by the commission considering the fact that the cost of renewable energy has substantially reduced. The reduction in the cost of renewable energy can be attributed to multiple factors including the reduction in price of technology. Considering these trends, it makes no commercial sense for the DISCOMs to continue purchasing only the brown component, which does not even account towards its Renewable Purchase Obligation, that too at a cost higher than the prevailing prices. The proposed tariff of Rs. 2.67/unit is still Rs. 0.23/kWh higher than the lowest solar tariff of Rs. 2.44/kWh discovered through competitive bidding

route in SECI-ISTS bid. It is also pertinent to mention that the proposed tariff is also Rs. 0.24/kWh higher than the lowest wind tariff of Rs. 2.43/kWh discovered in SECI-ISTS bid. Even the other winners in the SECI bid had quoted prices of Rs. 2.52/kWh and 2.53/kWh, which are again lower than the price of Rs. 2.67/kWh proposed by the Commission. The prices discovered in the recent bids are not one time exception but represent the changes in the industry. The solar tariffs in India have fallen by over 70% since 2011 from Rs. 8.79/kWh to Rs. 2.44/kWh.

- (93) While it is true that the projects set up under REC mechanism cannot be directly compared to large-scale projects set up under competitive bidding, it is also true that today it will not be in the commercial interest of the Discoms to procure only the brown component at prices higher than those discovered in the competitive bids. Considering the intermittent nature of RE power, it further makes no commercial sense to purchase only the brown component. Further, in today's scenario when the state is already in power surplus, if only the brown component is to be purchased, it has to be in accordance with the merit order. Therefore, it would only make sense to purchase the brown component if its price is lower than the lowest variable cost of generating station with which Discoms already have PPAs.
- (94) As it would not be feasible for RE generators to sell the brown component at a price lower than the lowest variable cost of Discoms tied up sources, it would be in the best interest that the RE Power purchased from these projects by the State Discoms at Rs. 2.67/unit shall also contribute towards Discom RPO targets.
- (95) The Discoms would not want to purchase such intermittent power at Rs. 3.17/unit when it already has surplus power from tied up sources with confirmed generation schedules whose variable cost is already less by more than Rs. 1/unit in which the corresponding REC can also be purchased.

- (96) It is proposed that the renewable energy from stations set up under the REC mechanism may be procured at the proposed price of Rs. 2.67/unit or any other rate deemed appropriate if such energy is also accounted for towards the Discoms RPO targets.
- (97) It has also been suggested that the Hon'ble Commission may set RE Power tariff for such RE stations registered under the REC mechanism for a period of next three years and may revisit the set tariff considering any new developments in the sector as well as the trend of prices discovered until then.
- (98) It has also been suggested that developers have taken a decision to share the risk or gain of REC market and any impact thereof should not be transferred to Discoms. Rates of RECs were higher initially and will also increase in future which are additional gain to them.

Analysis and Decision:

12. In view of discussions made in explanatory memorandum the Commission for 1.04.2019 onwards, gave following options in the draft Regulations:
- (i) The electricity component price of energy supplied by an RE project to distribution Licensee(s) shall be Rs. 2.67/unit. This rate shall remain applicable for its remaining useful life, for which PPA shall be extended accordingly.
 - (ii) The projects may use such electricity for self-consumption or sell electricity at mutually agreed price to other entities.
 - (iii) In case RE generator under REC mechanism wishes to opt out for REC mechanism and if the Discoms agree to purchase the renewable energy, they may extend the PPA at the tariff not exceeding 3.17/unit for remaining useful life of the plant and in such case the electricity purchased would be counted towards fulfillment of RPO and RE Generator would not be entitled to REC Certificate.
13. The Comments received have been discussed in previous section. It has been submitted that most of these have been established under Govt. of Rajasthan's Policy for Promoting Generation of Electricity from Wind-2012 and Rajasthan Solar Policy of 2011 and

2014 relevant clauses of which reads as under:-

Policy for Promoting Generation of Electricity from Wind-2012

“4.3 Utility grid power projects for sale through RE (Non-Solar) certificate mechanism:

The Power Producers will also be allowed to set up Wind Power Plants of unlimited capacity for sale through RE (Non-Solar) Certificate Mechanism. The power generated from these power projects shall be purchased by Discoms of Rajasthan at Pooled Cost of Power Purchase determined by the Commission from time to time. The Power Producers will be required to apply for accreditation to the State Agency and thereafter to Central Agency for registration and issuance of RE (Non-Solar) Certificate under REC mechanism as per order/regulations of appropriate Commission issued in this regard. The Power Producers will sell RE (Non-Solar) Certificates as per the regulations/orders of the appropriate Commission.”

Rajasthan Solar Energy Policy, 2011

“5.1.8 Utility Grid Power Projects for sale through RE (Solar) Certificate Mechanism:

The Rajasthan State will promote Solar Power Producers to set up Solar Power Plants of unlimited capacity for sale through RE (Solar) Certificate mechanism. The Solar Power Producers will be required to apply for accreditation to the State Agency and thereafter to Central Agency for registration and issuance of RE (Solar) certificate under REC mechanism as per order/regulations of appropriate Commission issued in this regard. The Power generated from these power projects shall be purchased by Discoms of Rajasthan at Pooled Cost of Power Purchase as determined by the appropriate Commission from time to time. The Solar Power Producers will sell RE (Solar) Certificates as per the regulations/orders of appropriate Commission. “

Rajasthan Solar Energy Policy, 2014

“7.3 Utility Grid Power Projects for sale through RE (Solar) Certificate Mechanism:

The State will promote Solar Power Producers to set up Solar Power Plants of unlimited capacity for sale through RE (Solar) Certificate mechanism. The Solar Power Producers will be required to apply for accreditation to the State Agency and thereafter to Central Agency for registration and issuance of RE (Solar) certificate under REC mechanism as per orders / regulations of appropriate Commission issued in this regard. The Power generated from these power projects shall be purchased by Discoms

of Rajasthan at Pooled Cost of Power Purchase as determined by the appropriate Commission from time to time. The Solar Power Producers will sell RE (Solar) Certificates as per the regulations/orders of appropriate Commission."

14. It has been contended by the Developers that most of these plants were set up under the above policies. However the Policy was silent on the issue of duration of PPA as such they have entered into PPA(s) upto 31.3.2019 with their understanding that the PPA(s) shall be extended. Developers submitted that the period for PPA should have been for useful life of the project. However, now Discoms have refused extension of the PPAs. After expiry of PPA they would be in great difficulty as it would not be possible for them to sell the power to third parties and therefore they wish to have PPA(s) with the Discoms.

15. It was also submitted that the commission under Sec. 86(1)(b) of the Electricity Act has function to regulate electricity purchase and procurement process of distribution licensees including the price at which electricity shall be procured from the generating companies and under Sec. 86(1)(e), it is to promote generation of electricity from renewable sources of energy by providing suitable measures for connectivity with the grid and also specify renewable energy purchase obligation. Under these provisions of the Electricity Act , Commission can make specific provisions of Discom to extend PPA and can provide regulatory certainty of PPA term to the remaining useful life of the project irrespective of whether a RE generator continues under REC mechanism project or not. In doing so, commission has to balance the interest of Discoms as well as of RE generators and guided by the provisions of the Electricity Act and tariff policy and not by economics of Discoms.

16. The Commission has considered the Comments/Suggestions received on proposed draft in writing as well as submissions made during the hearing on the matter. Only those comments considered relevant for present proceedings have been discussed below. The Commission has also perused the Section 86(1) (b) and 86(1) (e) of the Act and relevant clauses of the Regulations and Government Policy. Commission's decision on each point is

discussed in foregoing para(s).

17. The Commission has also noted that proviso to regulation 10 of REC regulations provides that with the progressive development of the electricity sector, the pricing methodologies for electricity component and REC shall be reviewed at periodic intervals as may be considered appropriate by the Commission. It has also been observed from the submissions of the project developers as well as Discoms that over last few years there are sea changes in the pricing of renewable and with progressive developments tariff for both solar and wind have come down steeply.

18. As regards contention of the stakeholders regarding CERC regulations and powers of the Commission to make such an amendment, the Hon'ble Madras High Court vide its judgement dt. 15.7.16 in a similar matter Simran Wind Project Private Limited and Ors.Vs: Tamil Nadu Electricity Regulatory Commission and Ors. While referring to various judgments of Hon'ble Apex Court as regards power of TNERC in putting a cap on pooled Cost price has held that TNERC is well within its right to deviate from its earlier notification .The relevant paras of the said judgement are quoted as under:

15. Discussions and Findings:-- The power purchase transaction between the generator and obligated entity is in two forms as enumerated below:

"(i) to sell the energy at preferential tariff or

(ii) to sell the electrical component to the distribution company or third party and the environmental component in power exchange."

16. Both the schemes have been promoted in public interest to tap the maximum generation by encouraging private players. The participation in either of the schemes undoubtedly involves huge cost. Obviously, the companies making the investment would certainly want to make profits out of investment. This is where the policy of the government comes in. The cost of purchase of such electricity is directly thrust on the consumer. Therefore, a balance approach was necessary and therefore, mechanism was evolved, authorising the SERCs to fix the tariff.

17. It is not in dispute that the role to determine the tariff is vested with the appropriate commission and in the present case with the TNERC. Such a power is derived from sections 61 and 62. It has been contended that the REC scheme is a national level scheme floated

in compliance with the national electricity plan and tariff policy by the CERC and only the central commission would have the powers to determine the APPPC. This court is not in consonance with the contentions of the learned counsel for the petitioner. Section 3 of the Electricity Act lays down that the National Electricity Policy and Tariff Policies are to be prepared by the central government, in consultation with the state governments and such plans shall be notified once in five years. The object of framing such policy is to give a direction to the promotion, development and utilisation of the various sources of energy. They lay down the broader prospective and act as a guidance to the statutory bodies to frame the regulations. From the national electricity policy, it is evident that it is the duty of the SERCs to promote the non-conventional sources of energy and for that purpose determine the tariffs for the purchase and the purchase obligation. The tariff policy in clause 8.3 also confirms the authority of the SERC to determine the tariff.

18. *It is also pertinent to mention here that sections 79 and 86 of the Electricity Act, 2003, under which the central and state commissions clearly spell out their distinct and independent role. Section 79 (1) (b) of the act lays down that the power to regulate tariff shall vest with the CERC in case of composite schemes with involvement of more than one state. However, as stated above, it is subject to the regulations framed under section 178 and other provisions of the act. At the cost of repetition, if the CERC either expressly or impliedly empowers the SERC to exercise any of its functions, the authority of the SERC would reign on the subject. Section 86 (1) empowers the SERC to determine the tariff for generation, supply, transmission and wheeling of electricity, etc within the state. Sections 178 and 181 empower the central as well as state commissions, respectively to frame regulations among other things for issuances of tariff orders with modifications or conditions under sub-section 3 of section 64. The powers are independent.*

19. *The bone of contention of the petitioner is that the REC scheme being a national level scheme, the regulations framed by the TNERC has to be in consonance with the regulations of the CERC. It has also been contended that the regulations of the TNERC being a delegated legislation, cannot override the provisions of the act and the CERC regulations, from where it has derived the power. It was also contended that the notifications are without reasons and hence arbitrary and against Article 14 and 19 of the constitution. The following paragraphs in the judgment reported in 2009 (15) SCC 570 has also been relied upon.*

25. *The 2003 Act contains separate provisions for the performance of the dual functions by the Commission. Section 61 is the enabling provision for framing of regulations by the Central Commission; the determination of terms and conditions of tariff has been left to the domain of the Regulatory Commissions under Section 61 of the act whereas actual tariff determination by the Regulatory Commissions is covered by section 62 of*

the act. This aspect is very important for deciding the present case. Specifying the terms and conditions for determination of tariff is an exercise 39 which is different and distinct from actual tariff determination in accordance with the provisions of the act for supply of electricity by a generating company to a distribution licensee or for transmission of electricity or for wheeling of electricity or for retail sale of electricity.

36. Electricity was subject to strict regulations. It, subject to just exceptions, was the monopoly of the State Electricity Boards, Public Sector Undertakings. Participation of the private sector inter alia in trading was encouraged by the provisions of the act. court's concern, therefore, would be not only to see that the Statute is *intra vires* the Constitutional scheme including the legislative field, but also as to whether it passes the test of reasonableness having regard to the object and purpose of the act. For achieving the aforementioned purpose not only the premise, relevancy of the constitutional scheme in relation thereto is required to be taken into consideration as would be noticed a little later but therefor the doctrine of purposive interpretation should also be resorted to.

39. The Superior court would ensure that the subordinate legislation has been framed within the four corners of the act and is otherwise valid. The issue therefore which arises for our consideration is as to whether the delegation having been made for the purpose of carrying out the object, could the limitation be imposed for ascertaining as to whether the applicant is fit and proper person and disregarding his creditworthiness. There cannot be any doubt whatsoever that a statute cannot be vague and unreasonable."

20. This court after perusal of the regulations of the CERC, with its amendments and the regulations of the TNERC and upon a conjoint reading of the provisions of the Electricity Act, is unable to accept the contention of the counsel for the petitioner.

21. As per the definition of pooled cost of purchase in the CERC regulations, it is the weighted average pooled purchase price at which the distribution licensee, has purchased the electricity, including the cost of self-generation, if any in the previous year from all the energy supplies, long term and short term but excluding those based on renewable energy sources, as the case may be. The authority of the SERC to fix the preferential tariff is not disputed and therefore, section 79 (1) is not applicable. Further, Regulation 2 (k) of the CERC Regulations, 2010, prior to the amendment in 2013 also confirms the authority of the state to fix the preferential tariff. The distribution licensee purchases the electricity at the price fixed by the state commissions, viz a viz, the TNERC here. Therefore, it cannot be said that the state commissions cannot fix their own method to calculate the average pooled cost of power purchase. There is force in the contention of the learned senior counsel for the 1st respondent that section 86 (1) (b) gives unfettered power to determine the price of power purchase within the state. In addition, sections 181(2d) and (2f) also empower the state commissions to fix and prescribe the conditions for such fixation.

22. It is also pertinent to mention here that the original definition of

APPPC under the TNERC Regulations itself was different from that of the regulations of the CERC. However, the same was not challenged. Now the present amendment has been introduced to put a cap at 75%. The present amendment has been brought into force after hearing the stake holders, which again is not in dispute and therefore is in conformity with the procedure contemplated under section 64. The draft notification was published as contemplated under section 181(3) of the act and objections were called for from the public. The same were examined by the expert body and only then the amendment has been approved and the notification published. Unlike in fixation of tariff for consumers, a public hearing is not necessary. Here, from the explanation to the amendment, it is evident that the cap has been fixed to eschew the APPPC from exceeding the preferential tariff. The same has further been clarified in the counter. The said amendment has been brought into force, to safeguard the consumer's interest as envisaged under section 61 (d) of the act and also at the same time, to balance the procurement cost of purchase price of electricity component. Therefore, this court is of the view that the amendment is neither vague nor arbitrary and therefore there is no violation of Articles 14 and 19 of the constitution. In view of the fact that the power has been exercised within the parameters of delegation, the impugned notification cannot be held to be without authority and ultra vires. Hence the judgment of the hon'ble supreme court does not come to the aid of the petitioner.

23. It was also contended that in the FOR meeting held on 29.07.2011 and 9/10.10.2011, the need to have uniformity in the APPPC was emphasized and accepted by all the members including the chairman of the 1st respondent. The decisions in the forum of regulators' meetings, though are binding in nature, cannot take away the right of the commissions to issue regulations under the statute. In the present case, after the meeting of forum of regulators, the CERC has amended regulation 5 (1) (c) by permitting the appropriate commissions to determine the APPPC. The amendment is with prospective effect.

24. The amendment also was assailed by the counsel for the petitioner on the ground that it only facilitates the appropriate commission to calculate the APPPC based on the available data and does not extend the power to fix any cap. This court is again of the view that the contention is unsustainable. When the power to fix the tariff under sections 61, 62, 86 and 181 vests with the 1st respondent, it is open to them to impose any restriction for the fixation of APPPC. The object of leaving the function to the SERCs is because, they would be best suited to determine the escalation in prices of fuel, etc within the respective states.

25. The next point for consideration is whether, the 1st respondent is estopped from effecting the notification to the disadvantage of the petitioners after their huge investment. It is now settled law, that there cannot be any estoppel against a statute. The regulations framed exercising the powers under the Electricity Act have the same force as that of a statute. It is a policy decision, of course, in public interest. By

operation of law, the rights created to a party under agreement can be annulled. At this juncture, it is relevant to rely upon the judgement relied upon by the counsel for the 3rd respondent in 2010 (4) SCC 603, wherein the apex court has held as follows:--

"19. In this connection, it may also be noted that the Central Government has also, in exercise of its powers under Section 3 of the 2003 Act, notified the Tariff Policy with effect from 6.1.2006. One of the primary objectives of the Tariff Policy is to ensure availability of electricity to consumers at reasonable and competitive rates. The Tariff Policy tries to balance the interests of consumers and the need for investments while prescribing the rate of return. It also tries to promote training in electricity for making the markets competitive. Under the Tariff Policy, there is a mandate given to the Regulatory Commissions, namely, to monitor the trading transactions continuously and ensure that the electricity traders do not indulge in profiteering in cases of market failure. The Tariff Policy directs the Regulatory Commissions to fix the trading margin in a manner which would reduce the costs of electricity to the consumers and, at the same time, they should endeavour to meet the requirement for investments.

25. The 2003 Act contains separate provisions for the performance of the dual functions by the Commission. Section 61 is the enabling provision for framing of regulations by the Central Commission; the determination of terms and conditions of tariff has been left to the domain of the Regulatory Commissions under Section 61 of the act whereas actual tariff determination by the Regulatory Commissions is covered by section 62 of the act. This aspect is very important for deciding the present case. Specifying the terms and conditions for determination of tariff is an exercise 39 which is different and distinct from actual tariff determination in accordance with the provisions of the act for supply of electricity by a generating company to a distribution licensee or for transmission of electricity or for wheeling of electricity or for retail sale of electricity.

26. The term "tariff" is not defined in the 2003 Act. The term "tariff" includes within its ambit not only the fixation of rates but also the rules and regulations relating to it. If one reads section 61 with section 62 of the 2003 Act, it becomes clear that the Appropriate Commission shall determine the actual tariff in accordance with the provisions of the act, including the terms and conditions which may be specified by the Appropriate Commission under section 61 of the said act. Under the 2003 act, if one reads section 62 with section 64, it becomes clear that although tariff fixation like price fixation is legislative in character, the same under the act is made appealable vide section 111. These provisions, namely, sections 61, 62 and 64 indicate the dual nature of functions performed by the Regulatory Commissions, viz, decision-making and specifying terms and conditions for tariff determination.

28. The 2003 Act contemplates three kinds of delegated legislation. Firstly, under section 176, the Central Government is empowered to make rules to carry out the provisions of the act. Correspondingly, the State Governments are also given powers under section 180 to make rules. Secondly, under section 177, the Central Authority is also empowered to make regulations consistent with the act and the rules to carry out the provisions of the act. Thirdly, under section 178, the Central

Commission can make regulations consistent with the act and the rules to carry out the provisions of the act. SERCs have a corresponding power under section 181. The rules and regulations have to be placed before Parliament and the State Legislatures, as the case may be, under section 179 and 182. The Parliament has the power to modify the rules/regulations. This power is not conferred upon the State Legislatures. A holistic reading of the 2003 Act leads to the conclusion that regulations can be made as long as two conditions are satisfied, namely, that they are consistent with the act and that they are made for carrying out the provisions of the act

50. Applying the above test, price fixation exercise is really legislative in character, unless by the terms of a particular statute it is made quasi-judicial as in the case of Tariff fixation under section 62 made appealable under section 111 of the 2003 Act, though section 61 is an enabling provision for the framing of regulations by CERC. If one takes "Tariff" as a subject matter, one finds that under Part VII of the 2003 Act actual determination/fixation of tariff is done by the Appropriate Commission under section 62 whereas section 61 is the enabling provision for framing of regulations containing generic propositions in accordance with which the Appropriate Commission has to fix the tariff. This basic scheme equally applies to 54 subject-matter "trading margin" in a different statutory context as will be demonstrated by discussion hereinbelow

58. One must understand the reason why a regulation has been made in the matter of capping the trading margin under section 178 of the act. Instead of fixing a trading margin (including capping) on a case to case basis, the Central Commission thought it fit to make a regulation which has a general application to the entire trading activity which has been recognized, for the first time, under the 2003 Act. Further, it is important to bear in mind that making of a regulation under section 178 became necessary because a regulation made under section 178 has the effect of interfering and overriding the existing contractual relationship between the regulated entities. A regulation under section 178 is in the nature of a subordinate Legislation. Such subordinate Legislation can even override the existing contracts including power purchase Agreements which have got to be aligned with the regulations under section 178 and which could not have been done across the board by an Order of the Central Commission under section 79(1)(j)."

26. The ratio laid down by the apex court is squarely applicable to the present facts of the case. What that flows from the ratio is that the powers of the CERC under section 79 are administrative and the powers under section 178 are legislative. Also, by exercising the legislative powers, the contractual terms can be overridden. The powers of the state commission under section 181 is pari-materia to that of the central commission under section 178. All that is required is that the regulation must be in conformity with the objects of the act and exercised in furtherance of the provisions of the act. Further, the judgement also clearly spells that the role of the regulatory commission is twin folds, namely, (1) decision making and (2) specifying terms and conditions for determination of tariff. Therefore, the TNERC would have the power not only to determine the tariff but also to impose conditions.

27. Also, in the judgment relied upon by the counsel for the petitioner, the apex court in 2009 (15) SCC 570 has held as follows:--

"62. Judicial review from an administrative decision lies on a very narrow compass. The superior courts in exercise of their jurisdiction under Article 226 or 32 of the Constitution of India ordinarily would not enter into the merit of the matter. Their primary concern is with the decision making process.

28. In the case on hand, this court has already held that there is no error in the decision making process. Therefore, the call for judicial review should only fail.

29. Also the apex court in the judgment reported in SC 079 : 2016 (4) SCC 134 (Kothari Industrial Corporation Limited v. Tamil Nadu Electricity Board) has held as follows:

"11. Be that as it may, the question referred has been squarely answered by this court in Shree Sidhballi Steels Limited v. State of Uttar Pradesh & Ors. (2011 (3) SC 193) wherein this court has considered a similar question with regard to the withdrawal of concessional tariff/rebate to an industrial unit carrying on business in the hill areas of the State of U.P. (now the State of Uttarakhand). After an in-depth consideration of the provisions of Section 48/49 of the Electricity Supply Act, 1948 under which the concessional tariff/rebate was granted and the provisions of section 21 of the General Clauses Act as well as the provisions of the U.P. Electricity Reforms Act, 1999 under which the concessional tariff/rebate was later withdrawn this court in para 51 came to the following conclusion--

"From the above discussion, it is clear that the petitioners cannot raise plea of estoppel against the Notification dated 7.8.2000 reducing hill development rebate to 0% as there can be no estoppel against the statute."

30. In view of the ratio laid down by the apex court and in view of the provisions of the act, discussed above, the TNERC is well within its right to deviate from its earlier notification.

19. Hon'ble APTEL in its judgement in appeal no. 200 of 2011 held that the term 'shall be guided' used in the Act cannot be termed as mandatory and any direction hampering the statutory functions of the Commission cannot be considered as binding upon the Commission.
20. CERC Regulations and Tariff Policy are guiding in nature and the State Commissions are required to ensure that generation, transmission and distribution are conducted on commercial principles; factors which would encourage competition and safeguard consumer's interest.

21. Once the State Commission has framed and notified the requisite Regulations after meeting the requirement of prior publication under Section 181(3), it is bound by such Regulations and the Central Commission's Regulations have no relevance in such cases. However, the State Commission may follow the Central Commission's Regulations on certain aspects which had not been addressed in the State Commission's own Regulations.
22. In the present case the Commission has already framed Regulations and is in the process of amending the Regulations keeping in view the peculiar conditions in Rajasthan which are to be addressed through Regulations by taking a specific view. In case of Rajasthan also under the present circumstances when the prices of Renewable energy have fallen much below the pooled Cost of power purchase and the Commissions has to exercise its Regulatory Powers so as to balance the interest of both generators as well as consumers.
23. In view of the above and proviso to regulation 10 the Commission is required to review the methodology. Due to the fact that the PPAs of generators covered under REC scheme are expiring on 31.3.2019 it will be appropriate to review the methodology with present regulatory exercise after considering comments and suggestions received.

(i) Pricing of Electricity Component under REC Mechanism

24. Discoms submitted that Rs. 2.67/kWh has been suggested by the commission considering the fact that the cost of renewable energy has substantially reduced. The reduction in the cost of renewable energy can be attributed to multiple factors including the reduction in price of technology. Considering these trends, it makes no commercial sense for the DISCOMs to continue purchasing only the brown component, which does not even account towards its Renewable Purchase Obligation, that too at a cost higher than the prevailing prices. The proposed tariff of Rs. 2.67/unit is still Rs. 0.23/kWh higher than the lowest solar tariff of Rs. 2.44/kWh discovered through competitive bidding route in SECI-ISTS bid. It is also pertinent to mention that the proposed tariff is also Rs. 0.24/kWh higher than the lowest wind tariff of Rs. 2.43/kWh discovered in SECI-ISTS bid. Even the other winners in the SECI bid

had quoted prices of Rs. 2.52/kWh and Rs. 2.53/kWh, which are again lower than the price of Rs. 2.67/kWh proposed by the Commission. The prices discovered in the recent bids are not one time exception but represent the changes in the industry. Similar situation exist in case of wind projects where tariff has also come down.

25. RE project developers submitted that the proposed rate of Rs.2.67/unit picked up being the lowest pooled rate cannot be the basis. This will affect their finances as due to lower duration PPA financial viability has already been affected and REC prices have also been dropped for wind from Rs. 1.5. to 1.00 per unit and for solar from Rs.9.3 to Rs. 1.0 per unit. Moreover when projects have been installed under Policy of Government some certainty should also be provided in terms of better rate and period of PPA.
26. Developers further contended that in bidding auctions average project size per bidder is 75 MW whereas under REC mechanism average project size is 2 MW per project. There is large variation in tariff which ensures viability of a 2 MW project vis-à-vis a 75 MW project. It has also been submitted that there are significant differences between the solar projects set-up under the Solar Park Scheme and the other solar projects set-up under the REC mechanism. These differences result into a sharp rise in the average Solar PV tariff.
27. Discoms submitted that while it is true that the projects set up under REC mechanism cannot be directly compared to large-scale projects set up under competitive bidding, it is also true that today it will not be in the commercial interest of the Discoms to procure only the brown component at prices higher than those discovered in the competitive bids. Considering the intermittent nature of RE power, it further makes no commercial sense to purchase only the brown component. Further, in today's scenario when the state is already in power surplus, if only the brown component is to be purchased, it has to be in accordance with the merit order. Therefore, it would only make sense to purchase the brown component if its price is lower than the lowest variable cost of generating station with which Discoms already have PPAs.

28. The Commission has noted the submissions of the Developers and the Discoms, the Commission is of the view that while on one hand the pooled Cost is increasing and on the other prices of Renewable energy have been falling steeply in bidding process and in this scenario when green component (with RPO) is available at a much lower rate than pooled cost no Discom or obligated entity shall be interested in buying brown component. Moreover pooled cost may continue to rise and this difference may increase further. In this scenario the Commission has to review the pricing of brown component or put some cap on it to provide necessary framework to save the existing plants whose PPA(s) are expiring under REC mechanism. Further while doing the review the Commission also have to keep in view the interest of the Discoms so that they are not overburdened with ever increasing rates that too without contributing to environment.
29. Discoms submitted that it may not be in their interest to procure only the brown component at prices much higher than those discovered in the competitive bids or at a rate much higher than the variable rate of power available to them.
30. However , the Commission has further looked into the variable Cost of two of the major State Generating thermal Stations (As per RVUN order for FY 2018-19) falling in highest bracket of variable Cost among State Generators which is as under:

	Variable Cost in Rs. Crores	Generation in MU	Variable Cost (Rs./unit)
KTPS	2253.09	8081.47	2.788
STPS	3371.05	9805.07	3.438
Wt. average	5624.14	17886.54	3.144

31. A suggestion has also been made to continue with pooled power purchase cost (also referred as 'pooled cost') of 2018-19 for balance period of useful life of the plant. However, that pooled cost of Rs. 3.67/unit does not reflect the current market price of Renewable Energy. Some of the stakeholders requested to continue with the same pooled cost in which such plants have been commissioned for useful life of the plant. This was opposed by other stakeholders as in the present mechanism all RE Projects are getting the same pooled cost and in such a case older

projects with higher capital cost shall get lower electricity price whereas other projects with lower capital cost shall get higher electricity price and it was requested to arrive at a common price applicable to all Developers.

32. It has also been observed that installed capacity under REC mechanism is approximately 639 MW out of which approx 95% capacity has been installed during the years 2011-12 to 2016-17 and average of pooled cost for JdVVNL, where majority of PPAs are executed, for these six years works out to be Rs. 3.14/unit. In view of very low capacity installed, recent development and variations in capital Cost and lower bid price discovered in last two years the pooled cost of last two years has not been considered. It is also stated that approximately half of the capacity installed belongs to public sector units (PSUs).
33. Commission has considered the submissions of the developers and the Discoms and the Commission is of the considered view that present discovered bidding tariff cannot be the sole ground of fixing price for purchase of electricity component as the capital cost of the project and the conditions under which these projects have been setup are different. These project warrants higher price than proposed Rs. 2.67/unit, while the submission of the Discoms are also to be considered as these costs are to be passed on to the consumers. Moreover, it is being specified in discharge of functions assigned to it under sec. 86(1)(b) of the Electricity Act to regulate electricity purchase and procurement process of distribution licensees including the price at which electricity shall be procured from the generating companies and under sec. 86(1)(e), to promote generation of electricity from renewable sources of energy by providing suitable measures for connectivity with the grid and also specify renewable energy purchase obligation. Therefore taking a balanced view the Commission for arriving at a decision regarding pricing of Electricity Component has considered the weighted average variable Cost of two major stations, Average of pooled cost during the period in which major quantum of plants have been installed and pooled cost of each year in which projects have been Commissioned/Registered .
34. During the last 7-8 years the pooled cost has kept fluctuating on higher or lower sides as compared to previous years and same had been applicable to all plants covered under the REC

mechanism. This has been accepted by all the RE generators covered under the Scheme. Accordingly considering the latest trends in pricing of Renewable Energy, submission of the Discoms, RE generators and the proviso regarding exercise of powers for review of *pricing methodology* the Commission has decided to cap the price of electricity component prospectively.

35. Considering above discussions and keeping in view submissions of developers and Discoms and in view of proviso of Regulation 10 regarding pricing methodology the Commission has decided to cap the price of electricity component to average of pooled cost of 2011-12 to 2016-17 for JdVVNL i.e. Rs. 3.14/unit. To maintain uniformity and certainty, this rate would be available to all Developers whose plants have commissioned till 31.03.2019 and are covered under the REC scheme for balance useful life considering the useful life as 25 years irrespective of the year of commissioning. The pooled cost is likely to increase further over the years. However, the capped rate shall remain the same over the balance useful life and burden on the Discoms will not increase. This in Commission's view shall balance the interest of RE project developers under REC scheme and the Discoms. The Draft regulations have been accordingly modified.
36. As the Pooled Cost rate is being capped, the Discom shall monitor the same and may file petition for determination of pooled cost when the need arises.
37. The electricity component price shall be applicable w.e.f 1.4.2019 for all plants commissioned upto 31.03.2019 covered under REC mechanism. It is at the discretion of the developer to sell the power to Discom at the price specified by the Commission or to sell the power in open market or use it for captive purpose. Even under the present dispensation the pooled Cost as per Regulations in force is applicable to all the Plants irrespective of year of Commissioning i.e., the electricity component price for a plant has been changing every year in accordance with the Regulations.

Duration of PPA

38. In view of the submission of the Stakeholders and to ensure certainty for the plants under REC mechanism already

commissioned till 31.3.19 the Commission holds that after expiry of current PPA, the Discoms may execute PPAs for balance useful life of the project with project Developers willing to sell power under REC mechanism to them.

(ii) Option for third party sale or captive consumption

39. The Commission has decided to continue with the option for RE project developers covered in REC scheme for sale to Open Access Consumers or a Captive User, it shall be at a mutually agreed price. Beyond 31.3.2019, if the RE developer wishes to sell the power in market or use it for captive purpose, he shall be allowed to do so.

(iii) Opting out for REC mechanism and selling power to Discoms for fulfilling their RPO.

40. In the draft Regulations, the Commission has proposed that in case RE generator under REC mechanism wishes to opt out for REC mechanism and if the Discoms agree to purchase the renewable energy, they may extend the PPA at the tariff not exceeding Rs 3.17/unit for remaining useful life of the plant and in such a case, the electricity purchased would also be counted towards fulfilment of their RPO and RE Generator would not be entitled to REC Certificate.
41. However, during the hearing, some of the project developers as well as Discoms prayed that to avoid any discretionary power the Commission may prescribe a uniform fixed rate for this option or such option should not be given. The Commission agrees with their submission and accordingly has not considered the proposed amendment. However to give option to Generators to sell power to Discoms in case REC mechanism is repealed the said regulation 12(1) has been suitably worded as under:

“In case REC mechanism is repealed the RE generator may sell power to Discoms subject to such conditions or methodology as may be specified by the Commission and/or sell renewable energy at mutually agreed price to other obligated entities or may use it for self consumption.”

Provided that above provision of the regulation shall not be applicable to an entity whose accreditation/registration has been revoked by the State / Central Agency."

(iv) Applicability of Regulations.

42. These Regulations shall come into force from 1.04.2019.
43. With above considerations, Commission finalizes the following Regulations:

Rajasthan Electricity Regulatory Commission (Renewable Energy Certificate and Renewable Purchase Obligation Compliance Framework) (Third Amendment) Regulations, 2019.

The above Regulations are placed below for issue and publication in the official Gazette.

44. Copy of the finalized regulations may also be sent to the State Government, the State Nodal Agency, i.e., RREC, concerned utilities and persons who have offered the suggestions/comments.

(Prithvi Raj)
Member

(Suresh Chandra Dinkar)
Member

(Shreemat Pandey)
Chairman

Annexure-I

List of persons offering comments/suggestions:

S.No	Particulars
1	M/s S.N. Milk Products Pvt. Ltd.
2	ZENEX Multiventures Private Limited
3	Reeja Infracon Private Limited
4	Oil India Limited
5	BG Wind Power Limited
6	BMD Pvt. Limited
7	Indian Energy Exchange (IEX)
8	AVVNL
9	Power & Energy Consultants India Ltd.
10	Darshan Roadlines Pvt. Limited
11	Barkat Hiring Co.
12	JdVVNL
13	NALCO
14	NHPC Limited
15	Kshitij Synergy Corp. Pvt. Ltd.
16	M/s Shri Giriraj Energy Pvt.Ltd.
17	M/s DESIGNCO
18	M/s Lohia Gramin Vikas Pvt. Ltd.
19	M/s Lohia Developers(India) Pvt. Ltd.
20	Raj Overseas
21	M/s Damodar Jagannath Malpani
22	M/s Giriraj Enterprises
23	Green Energy Association
24	M/s Dhariwal Industries Private Limited
25	M/s R.H. Prasad And Company Pvt. Ltd.
26	IWPA
27	M/s Snca energy & Infrastructure Pvt Ltd.
28	Naveen Distributors
29	M/s Tithal Trading Pvt Ltd.
30	M/s Navkar woolen Private Limited
31	Rajasthan Gum Private Ltd.
32	RE Connect Energy Solutions Pvt Ltd.
33	M/s National Enterprises
34	Gopal Somani
35	JVVNL
36	HPCL

37	Hasya Enterprises Pvt. Ltd.
38	Pritam Hospital
39	Rays Power Experts Pvt. Ltd.
40	Tect Power Private Ltd.
41	Bikaji Foods International Ltd.
42	M/s Laxmi Publications (P) Limited
43	Rajdarshan Hotels Pvt. Ltd.
44	Rajasthan Patrika Pvt. Ltd.
45	SOL Energy
46	Moss Energy Pvt Ltd
47	Vyomnath Power
48	Impact Solar Power Pvt Ltd.
49	IOCL
50	Tirupati Microtech Pvt Ltd.
51	Yogesh Agencies & Investment Pvt Ltd.
52	CEPCO Industries Pvt Ltd.
53	NTC Logistic India Pvt Ltd
54	Sh. R.G.Gupta
55	Real Step Infrastructure Pvt Ltd.
56	Sir Kastur Chand Daga Solar Power Inc.
57	ATAPI Power
58	Mayur Dye- Chem Intermediates Ltd.
59	Paharpur Cooling Towers Ltd.
60	C K Birla Group
62	Sharma Industries
63	Nahar Colors & Coating Pvt. Ltd.
64	Bharat Power Inc.
65	Orient Glazes Pvt. Ltd.
66	Manidhari Gums & Chemicals
67	Aman Home Appliance Pvt. Ltd.
68	Solar Energy Made Easy
69	Saraf Export Palace
70	Viney Corporation Ltd.
71	Hotel Hill top Palace
72	Fluidcon Engineer
73	J.k. Lakshami Cemet Ltd
74	IWTMA
75	Sanjiv Prakashan
76	Prakash Powers
77	Agrawal Trading Company
78	K.K. Enterprises
79	INOX Wind Infrastructure Services Ltd.
79	Shetia Erectors and Material Handlers Ltd.
80	Kishan gopal Rungta Pvt Ltd.
81	Below packing India Pvt Ltd

82	K.C(India) Pvt Ltd.
83	Nolaram Dulichand Dal Mills

RAJASTHAN ELECTRICITY REGULATORY COMMISSION

NOTIFICATION JAIPUR, March, 2019

No.RERC/Secy./Regulation -

In exercise of the powers conferred under Section 66 read with Sections 86 and 181 of the Electricity Act, 2003 and all provisions enabling it in this behalf, the Rajasthan Electricity Regulatory Commission proposes to make the following Regulations to amend Rajasthan Electricity Regulatory Commission of RERC (Renewable Energy Certificate and Renewable Purchase Obligation Compliance Framework) Regulations, 2010 (hereinafter referred to as the 'Principal Regulations'), namely:

1. **Short title and commencement:**

- (1) These Regulations shall be called the "Rajasthan Electricity Regulatory Commission (Renewable Energy Certificate and Renewable Purchase Obligation Compliance Framework)(Third Amendment) Regulations, 2019."
- (2) These Regulations shall come into force from 1.04.2019.

2. **Amendment in Regulation 10 of the Principal Regulations:**

The sub-regulation (2) & sub-regulation (4) of the Regulation 10 of the Principal Regulations shall be substituted as under:

"(2) The effective electricity component price applicable w.e.f. 1.04.2019 to the projects commissioned upto 31.03.2019 and covered under REC mechanism shall be as under:

For distribution licensee(s), shall be equal to the Pooled Cost of Power Purchase capped at average of pooled cot of power purchase for JdVVNL for 2011-12 to 2016-17 . This rate shall remain applicable for its remaining useful life, for which PPA may be executed accordingly.

Provided that such projects may also use such electricity for self-consumption or sell electricity at mutually agreed price to other entities."

"(4) Purchase of electricity component from the Renewable Energy having been issued REC would not be counted in fulfillment of RPO."

3. **Amendment in Regulation 11 of the Principal Regulations:**

The Regulation 11 of the principal Regulations shall be deleted.

4. **Amendment in Regulation 12 of the Principal Regulations:**

(A) The heading of sub-regulation 12 shall be substituted as under:

“12. Pricing options for Renewable Energy projects – Opting out of REC mechanism after 01.04.2019”

(B) The sub-regulation (1) of the Regulation 12 of the Principal Regulations shall be substituted as under:

“In case REC mechanism is repealed the RE generator may sell power to Discoms subject to such conditions or methodology as may be specified by the Commission and/or sell renewable energy at mutually agreed price to other obligated entities or may use it for self consumption.”

Provided that above provision of the regulation shall not be applicable to an entity whose accreditation/registration has been revoked by the State / Central Agency.”

(C) The sub-regulation (2) of the Regulation 12 of the Principal Regulations shall be deleted.

By Order of the Commission

Secretary

Note:

1. Principal Regulations were published in Rajasthan Gazette Extraordinary Part- 7 on 22.02.2011.
2. The Principal Regulations were amended vide:

- i. Rajasthan Electricity Regulatory Commission (Renewable Energy Certificate and Renewable Purchase Obligation Compliance Framework) (First Amendment) Regulations, 2016 notified in Rajasthan Gazette Extraordinary Part-7 on 9.05.2016.
- ii. Rajasthan Electricity Regulatory Commission (Renewable Energy Certificate and Renewable Purchase Obligation Compliance Framework) (Second Amendment) Regulations, 2017 notified in Rajasthan Gazette Extraordinary Part-7 on 10.07.2017.