

# Rajasthan Electricity Regulatory Commission, Jaipur

Petition No. 2169/2023

SUO-MOTU

**In the matter of the RERC (Terms and Conditions for Tariff determination from Renewable Energy Sources) (Second Amendment) Regulations, 2023**

**Coram:**

**Dr. B.N. Sharma, Chairman**

**Sh. Hemant Kumar Jain, Member**

**Dr. Rajesh Sharma, Member**

Date of hearing: 26.10.2023

**Date of Order: 08.12.2023**

**Memo on Statement of objects & reasons and consideration of Comments/ Suggestions, received from various stakeholders:**

**Background:**

1. The Rajasthan Electricity Regulatory Commission (RERC or Commission), in the exercise of the powers conferred by Section 86(1) (e) Read with section 181 of the Electricity Act, 2003 (Act 36 of 2003) prepared the following Regulations (hereinafter referred to as 'the draft Regulations'), namely:

*"Rajasthan Electricity Regulatory Commission (Terms and Conditions for Tariff determination from Renewable Energy Sources) (Second Amendment) Regulations, 2023"*

2. These Draft Regulations along with the Explanatory Memorandum and Public Notices were placed on the website of the Commission for inviting public comments. Comments/suggestions were also invited from interested persons through Public Notices published in the following newspapers, on the dates indicated against each:

- |     |                    |   |            |
|-----|--------------------|---|------------|
| (1) | Dainik Bhaskar     | : | 23.09.2023 |
| (2) | Rajasthan Patrika  | : | 23.09.2023 |
| (3) | The Times of India | : | 23.09.2023 |

3. The last date for submission of comments/suggestions by the interested persons/ public was 16.10.2023. There were Seventeen (17) stakeholders who offered their comments/suggestions on the Draft Regulations and Explanatory Memorandum, which have been considered by the Commission while finalising the Regulations, the list is placed at **Annexure-I**.

4. Public Hearing in the matter took place on 26.10.2023. The list of the stakeholder present during the hearing is placed at **Annexure-II**.

5. The main comments and views expressed by the stakeholders through their written submissions and during the hearing and the Commission's views thereon have been summarised in the following paragraphs. It may be noted that all the suggestions given by the stakeholders have been considered, and the Commission has attempted to elaborate all the suggestions and the Commission's decisions on each suggestion in the Statement of Reasons. However, in case any suggestion is not specifically elaborated, it does not mean that the same has not been considered.

6. The comments/suggestions have been grouped depending on their nature and relevance.

#### **7. Regulation 1: Short title, Extent and commencement:**

##### **Commission's Proposal:**

7.1 Commission in the draft Regulations proposed that the existing sub-regulation 1.2 shall be substituted with the following:

*"1.2 These Regulations shall extend to the whole of the State of Rajasthan. These Regulations shall be applicable for determination of tariff in cases covered under these Regulations from April 1, 2020, and onwards up to March 31, 2026."*

##### **Comments received:**

7.2 There are certain waivers, terms and conditions given in RE Policy-

23 which need to be incorporated in the regulation too, therefore the same regulation are advised to made applicable till Policy Period. Thus, Stakeholder submitted that the validity should be till March-2030 in line with new RE Policy 2023.

7.3 The Regulations are silent on the applicability of terms and conditions other than tariff related for Renewable Energy based captive power plants (both co-located and supplying power under open access), Renewable Energy plants supplying power to third party under Open Access and Renewable Energy plants installed behind the meter shall be applicable till 31-03-2026 or not. Further, main provision of existing sub-regulation 1.2 should be substituted with the following:-

*1.2 These Regulations shall extend to the whole of the State of Rajasthan. These Regulations shall be applicable for entire scope covered under Regulations 3 of the RERC (Terms and Conditions for Tariff determination from Renewable Energy Sources) Regulations, 2020 i.e. Scope of Regulation and extent of application, from April 1, 2020 and onwards upto March 31, 2026.*

**Commission's views:**

7.4 As also mentioned in the Explanatory Memorandum the Commission considering the request of several stakeholders to enable them to avail the benefits of the First Amendment, has proposed that extension in the current Regulation upto 31.03.2026 and in our view, no change is required in the draft Regulations.

7.5 It is further stated that as clarified in subsequent paras the Amendment Regulations will be applicable prospectively upto 31.03.2026 which also includes Terms and Conditions other than tariff governed by reg. 3.4.

7.6 Accordingly, the provision of the draft Regulations is retained as follows:

*"1.2 These Regulations shall extend to the whole of the State of Rajasthan. These Regulations shall be applicable for determination of tariff in cases covered under these Regulations from April 1, 2020, and onwards up to March 31, 2026."*

## 8. Regulation 3: Scope of Regulation and extent of application:

### Commission's Proposal:

8.1 Commission in the draft Regulations proposed that the existing sub-regulation 3.2 shall be substituted with the following:

*"3.2 Notwithstanding anything contained in these Regulations, the Commission shall adopt the tariff, if such tariff has been determined through a transparent process of bidding in accordance with the guidelines issued by the Central Government, as envisaged under Section 63 of the Act or where no such guidelines are issued by the Central Government, the tariff of such plants shall be adopted as has been determined through transparent bidding process in accordance with the bidding guidelines approved by the Commission."*

### Comments received:

8.2 Commission may prescribe a specific timeline for approval of such bidding guidelines.

### Commission's views:

8.3 The proposed Amendment is the enabling provision only for the introduction of the tariff-based bidding, Thus, in our view, to specify the timelines for approval is not required at this stage.

8.4 Accordingly, the provision of the draft Regulations is retained as follows:

*"3.2 Notwithstanding anything contained in these Regulations, the Commission shall adopt the tariff, if such tariff has been determined through a transparent process of bidding in accordance with the guidelines issued by the Central Government, as envisaged under Section 63 of the Act or where no such guidelines are issued by the Central Government, the tariff of such plants shall be adopted as has been determined through transparent bidding process in accordance with the bidding guidelines approved by the Commission."*

## 9. Regulation 5: Control Period:

### Commission's Proposal:

9.1 Commission in the draft Regulations proposed that the main

provision and first proviso to the existing sub-regulation 5.1 shall be substituted with the following:

*"5.1 The Control Period under these Regulations shall be of six (6) financial years starting from April 1, 2020, till March 31, 2026:*

*Provided that the tariff determined as per these Regulations for the RE projects commissioned upto 31.03.2024 during the Control Period, shall continue to be applicable for the entire duration of the Tariff Period as specified in Regulation 6 below:*

**Comments received:**

9.2 The project gestation period of a wind energy power plant is 12 to 18 months and the sunset period of these Regulations as per the draft will be March 31, 2026. Hence, it is impossible to commission a wind energy power plant in the proposed draft after the notification of the proposed amendment. It is requested to extend the control period of till March 31, 2027.

9.3 The control period is proposed to be Amended from "01.04.2020 to 31.03.2024" to "01.04.2020 to 31.03.2026" and with introduction of the new regime, which shall also be applicable to projects that have been allocated under the provisions control period (i.e., 01.04.2020 to 31.03.2024). It is a well settled law that a delegated legislation shall have prospective application (from the date of the notifications) (*Reliance Industries Ltd vs. Petroleum & Natural Gas Regulatory Board in appeal No. 222 of 2012 decided on 06.01.2014*). The Commission, being a delegated authority is barred by law to frame any regulation, to have a retrospective operation/application.

**Commission's views:**

9.4 Commission has considered the comments/suggestions received. The Commission is of the view the provisions of the Regulations will be applicable prospective only. However, for the sake of clarity, the Commission decides to retain the proposed main provision only and to drop the proposed amendment in the first proviso to this main provision.

9.5 Accordingly, main provision of the existing sub-regulation 5.1 is modified as follows in the finalised Regulations:

*"5.1 The Control Period under these Regulations shall be of six (6) financial years starting from April 1, 2020, till March 31, 2026."*

## **10. Regulation 7: Competitive Bidding for procurement of power generated by grid connected RE Projects:**

### **Commission's Proposal:**

10.1 Commission in the draft Regulations proposed that a new fourth proviso shall be added below the existing proviso to sub-regulation 7.2 as under:

*" Provided also that for procuring power from power plants of such technology where the competitive bidding guidelines have not been issued by the Central Government, including the biomass power projects, biomass gasifier-based power projects and biogas power projects getting commissioned after 31.03.2024, the distribution licensee shall carry out the competitive bidding process as per regulation 7.2 of these Regulations."*

### **Comments received:**

10.2 The proposed fourth proviso may be amended to state that bidding process is to be approved by the Commission.

10.3 As per the PPA executed between the stakeholders and the Discoms as well as the 2010 Biomass Policy, the tariff has to be determined by the Commission u/s.62 of the Electricity Act, 2003 and once the same has attained finality, the same cannot be subjected to tariff discovery u/s.63 of the Electricity Act, 2003. Section 63 is not applicable to the PPA which is finalised in accordance with Section 62 of the Electricity Act, 2003 and therefore, tariff u/s 63 cannot be made applicable.

10.4 A clarification is required that in the event the proposed amendment is accepted, the same would not be applicable in the case of the projects registered in the year 2021 and executed the PPA in the year 2022.

10.5 The proposed Draft Amendment is in the complete violation to the

Doctrine of Promissory Estoppel and Legitimate expectation. Further, doctrine of Estoppel operates even in the legislative field. (*Mahabir Vegetable Oils (P) Ltd. Vs. State of Haryana and Ors., cited as, 2006 3 SCC 620*).

10.6 During a particular control period the major norms, tariff methodologies etc cannot be changed which are fixed for the purpose of regulatory certainty for the investors.

10.7 PPAs already executed and plants about to be commissioned during the proposed extension of the control period should be exempted from the scope and ambit of the applicability of the proposed amendment.

10.8 Commission is restricted in law to exercise its regulatory powers, to introduce competitive bidding under section 63 of the Electricity Act, for Biomass/WTE Projects, until the mandate under the National Tariff Policy is reversed. Regulations are subservient to Act and cannot deviate from the provisions of the Act. Therefore, NTP 2016 having force of law. and this Hon'ble Commission under Section 61 of the Electricity Act, 2003, shall be guided by the same, is restricted in law to frame regulations, contrary to its mandate. (*Ispat Industries Ltd vs Commissioner of Customs, Mumbai, cited as, (2006) 12 SCC 583*). Further, the rule-making power cannot travel beyond scope of the enabling Act. (*State of Karnataka v. H. Ganesh Kamath, cited as, (1983) 2 SCC 402*).

10.9 The Amendment, if any approved, would only have a prospective effect upon the fresh PPAs to be executed as the competitive bidding is to be initiated to "select power generator" who offer the most competitive bid price.

10.10 The legally and contractually protected rights cannot be taken away by virtue of delegated legislation which has come to effect subsequent to the execution of the PPAs. Vested rights cannot be taken away by way of delegated legislation and that too retrospectively. [*MRF Ltd. Kottayam Vs. Assistant Commissioner Sales Tax and Ors, cited as, 2006 8 SCC*

702).

10.11 Exception may be carved for the ongoing projects/projects where PPAs have been executed prior to notification of the Second Amendment.

10.12 The Draft Second Amendment by not drawing distinctions between projects already in the process of implementation, and projects yet to be implemented w.r.t. determination of tariff, violates the essence the National Electricity Policy and the National Tariff Policy Issued by the Ministry of Power (both having the force of law), pursuant to Section 3 of the Electricity Act.

10.13 Only the Feed in tariff has been contemplated under the Biomass Policy 2010. Tariff for FY 2022-23 was determined by the Commission on 06.06.2022 based on Regulation in force at that time. Tariff determination for one year meant that it will be continued.

10.14 As per the National Tariff Policy 2016 clause 6.4 Discoms shall compulsorily procure 100% power produced from all the Waste-to-Energy in the State, at the tariff determined by the appropriate Commission under Section 62 of the Act. Further, Discoms shall procure power through competitive bidding route except from waste-to-energy projects (which includes Biomass Projects). Competitive Bidding is recognized only under Section 63 of the Act & there cannot be any Competitive Bidding for Biomass. Promotion of Waste to Energy Projects/Biomass Projects is a legal and statutory mandate on this Hon'ble Commission.

10.15 Once the Central Government has taken a policy view to exclude competitive bidding for Biomass/WTE projects, which also has statutory flavour in terms of the decision of the Hon'ble Supreme Court of India in *Energy Watchdog v. CERC, (2017) 14 SCC 80*, amendment to introduce competitive bidding as enshrined under section 63 of the Electricity Act, 2003, for Biomass/WTE Projects is violative of the mandate under the NTP, 2016 as well as the law laid down by the Hon'ble Supreme Court.



10.16 Competitive Bidding is recognised only under Section 63 of the Act & there cannot be any Competitive Bidding for Biomass. By the general regulatory powers this Commission cannot override the statutory restriction provisioned under Section 63 of the Electricity Act. This Commission is a creature of a statute and even its inherent powers cannot travel beyond the four walls of said statute. Further, it has also been settled by the Hon'ble Supreme Court that as per Section 181 of the Electricity Act, any regulation cannot be in non-conformity with the Electricity Act, or the rules framed thereunder.

10.17 Evidently, as determined by this Hon'ble Commission in the Generic Tariff Order dated 06.06.2022, Biomass tariff is a single part, two component tariff. While a developer can predict 'capex', 'fuel' which is 'mustard straw' (not regulated by state or otherwise), is a variable quantum and its procurement cost cannot be predicted for long term procurement (25 years). In fact, 'fuel' component has been allowed an escalation every two years by this Hon'ble Commission, recognizing the variability of this component. Having said that, there cannot be competitive bidding on one component 'capex' and determination of the other component i.e., 'fuel'. Such hybrid concept of bidding is not recognised in law, and neither is permissible under the Electricity Act, 2003

10.18 Any comparison of Biomass projects with other WTE Projects such as Municipal Solid Waste (MSW) to Energy Projects on the ground that Section 63 bids have been called in case of MSW Projects, would be inappropriate as in MSW, the fuel i.e., Municipal Waste is either given for 'free' and/or a 'tipping fee' is paid, whereas, Biomass fuel is not regulated and is dependent on market dynamics.

10.19 The Bio-mass energy-based projects are essential in the State of Rajasthan to fulfil the Renewable Purchase Obligation ('RPOs') by the State Discoms. This Commission, vide RERC (Renewable Energy Obligation) Regulations 2007, has specified the percentage of energy consumption, especially from Biomass sources for the year 2021-2022 to 2023-2024.

Notably, the State Distribution Companies, have been unable to fulfil such obligations since FY 2017-2018, and will enable the State Distribution Companies to adhere to such RPOs.

10.20 The proposed Amendment will lead to an ambiguous situation for the under-construction power plant having PPA with Discoms where tariff is to be determined by RERC and actual project commissioning gets delayed beyond 31.03.2024. As per the proposed amendment, tariff for such projects will be determined through tariff based competitive bidding as per guidelines issued by Central Government or as approved RERC. Discoms to use guidelines issued by Central Government for similar technology and necessary deviations may be taken after obtaining prior approval of RERC.

10.21 Proposed amendment will be detrimental to such under-construction power plants as their PPAs will get jeopardized and will become null and void if project commissioning gets delayed beyond 31.03.2024. Further, obtaining prior approval for bidding guidelines from RERC will take substantial time leading to time delays. Hence, the Commission is requested to allow determination of tariff under section 62 for the power plants where PPA is already signed by Discoms, and power project is under construction as per the prevailing mechanism with a condition that these projects will be commissioned within the control period.

10.22 Proposed amendment will make the procurement process more transparent as well as standardized and thus, is a welcome step towards promotion of renewable energy in the state. However, it is imperative that unless a well-defined timeline is prescribed by the Commission for getting the bidding guidelines approved, such provisions may increase the turnaround time for the procurement and may negatively impact the power procurement planning of distribution licensees as well as project viability for the developer(s). Therefore, in the interest of all stakeholders, it

is recommended that the Commission may prescribe a specific timeline for approval of such bidding guidelines.

**Commission's views:**

10.23 The Commission has considered the comments received from the stakeholders. Most of the stakeholders have requested the Commission to determine the tariff under Section 62 of the Electricity Act, 2003 instead of Section 63 especially for the projects for which the PPAs have already been signed.

10.24 It is observed that Commission vide its order dated 24.11.2023 has approved the proposal of Discoms to procure 105.4 MW power from the biomass power plants. Further, these projects have been envisaged considering the provisions of the GoR Policy 2010. In addition, as per the submissions most of the PPAs were executed in FY 2021- 2022 looking to the provisions of Regulation in force and investment has already been made in these projects. Further, it is also noted that there is a short fall in meeting their RPOs by the Discoms.

10.25 Considering above and in order to safeguard the investment made by the investors in the projects for which the PPAs have already been approved by the Commission and to provide the regulatory certainty the draft regulation has been appropriately amended as follows in the finalised Regulations:

The following new proviso shall be added below the existing provisos to sub-regulation 7.2 as under:

*"Provided also that for procuring power from power plants of such technology where the competitive bidding guidelines have not been issued by the Central Government, including the biomass power projects, biomass gasifier-based power projects and biogas power projects except for the plants which are already commissioned or for which PPAs have been approved by the Commission before the date of notification of these Regulations, the distribution licensee shall carry out the competitive bidding process as per regulation 7.2 of these Regulations:*

## 11. **Regulation 8: Generic Tariff:**

### **Commission's Proposal:**

11.1 Commission in the draft Regulations proposed the existing proviso to sub-regulation 8.1 shall be substituted with the following:

*"Provided that the generic tariff for these projects commissioned up to 31.03.2024 shall be applicable for such RE Projects of same type and shall remain valid for the tariff period as specified in regulation 6 above."*

### **Commission's views:**

11.2 Considering the view taken by the Commission in the preceding paras, the proviso to sub-regulation 8.1 of the Draft Regulations is modified as follows in the finalised Regulations:

*"Provided that the generic tariff for the projects which are already commissioned or for which the PPAs have been approved by the Commission before the date of notification of these Regulations shall be applicable for such RE Projects of same type and shall remain valid for the tariff period as specified in regulation 6 above."*

## 12. **Regulation 43: Fuel Price:**

### **Commission's Proposal:**

12.1 Commission in the draft Regulations proposed the existing proviso to sub-regulation 43.1 shall be substituted and a new proviso shall be added below the existing provision of sub-regulation 43.1 as under:

*"Provided that the fuel cost arrived at as above shall be applicable to the Biomass power plants commissioned during the current Control Period up to 31.03.2024 and also during the earlier Control Periods FY 2009-15 and FY 2015-20.*

*Provided further that for the Biomass power plants commissioned on or after 01.04.2024, the fuel price shall be governed by the bidding documents issued in accordance with regulation 7.2 above."*

### **Comments received:**

12.2 The proposed proviso may be amended to state that bidding

documents are to be approved by the commission.

12.3 Stakeholders requested the Commission to allow annual escalation of 7% to 10% in fuel cost on year-to-year basis as the biomass sector across the country is facing significant inflation.

12.4 Commission in the proposed mechanism after 31.03.2024 the pass through of prices may not actually happen and will lead to litigations. Therefore, it is requested to provide a mechanism for calculation of the escalation rates or notify escalation rates for determination of the energy charge payable to Bio-mass generators.

**Commission's views:**

12.5 It is stated that Commission has proposed the Amendment so as to incorporate an enabling provision for the determination of variable charges in case of the biomass projects awarded through bidding process. However, considering the view taken by the Commission in the preceding paras Commission has appropriately modified provision of the Draft regulation.

12.6 In view of the above, the proviso to the sub-regulation 43.1 of the Draft Regulations is modified as follows in the finalised Regulations:

*"Provided that the fuel cost arrived at as above shall be applicable to the Biomass power plants which are already commissioned or for which the PPAs have been approved by the Commission before the date of notification of these Regulations and also for the plants commissioned during the earlier Control Periods FY 2009-15 and FY 2015-20.*

*Provided further that for the Biomass power plants to be commissioned under the competitive bidding, the fuel price shall be governed by the bidding documents issued in accordance with regulation 7.2 above."*

**13. Regulation 44: Use of fossil fuel or Solar Power:**

**Commission's Proposal:**

13.1 Commission in the draft Regulations proposed that a new second proviso shall be added below the existing proviso to sub-regulation 44.2 as

under:

*"Provided further that usage of solar power shall be allowed only in those projects, where solar power projects are commissioned on or before 31.03.2024."*

**Comments received:**

13.2 All plants commissioned until 31.03.2024 should be allowed to use coal or solar to the extent of 15% so that all plants operating in the State are at level playing field. Also, there are no plants under construction. Further, the bidding tariff is being made applicable for plants commissioned after 31.03.2024 and hence, the solar/coal usage should also be made applicable upto the same date, i.e.,31.03. 2024.

13.3 Stakeholders submitted that proposed proviso may be amended so that use of fossil fuel or solar power is allowed upto 31.03.2026.

13.4 The existing main provision of regulation Reg 44.1 may be amended as under:

*"For New biomass power projects based on Rankine cycle technology also installed after notification of the Regulation 2020, use of fossil fuels or solar power shall be allowed upto 31.03.2024."*

13.5 The second new proviso may be modified as under:

*"Provided further that usage of solar power shall be allowed only in those projects, where solar power projects are commissioned on or before 31.03.2024, with no change in Tariff as per PPA."*

13.6 Commission is requested to provide a detailed methodology for full pass through or sharing of benefits accrued to the bio-mass generators by blending bio-mass energy with the solar energy. Pass through/sharing of the benefits shall be calculated w.r.t. solar tariff discovered in the latest tender process held in the State.

**Commission's views:**

13.7 As regards the request of allowing use of 15% fossil fuel or solar power up to 31.03.2024 for the new biomass power plants also, it is stated that while incorporating this provision, Commission took a conscious

decision to allow use of 15% fossil fuel or solar power to the existing biomass power plant only i.e., plants already achieved COD power before coming into effect of the RERC RE Tariff Regulations 2020.

13.8 Also, considering above position, it would not be appropriate to make any amendment in Regulation 44.1.

13.9 Further, since the existing regulations are being extended up to 31.03.2026, in our view the facility of usage of solar power to the extent provided in the Regulations should also be extended up to 31.03.2026.

13.10 Accordingly, in view of the above, the proposed Amendment in the second proviso to sub-regulation 44.2 of the Draft Regulations is appropriately amended as follows in the finalised Regulations:

*"Provided further that usage of solar power shall be allowed only in those projects, where solar power projects are commissioned on or before 31.03.2026."*

#### **14. Regulation 88: Tariff for existing Plants set up as per Government of Rajasthan and Government of India Policies:**

##### **Commission's Proposal:**

14.1 Commission in the draft Regulations proposed as under:

- (1) The existing proviso of sub-regulation 88.1 shall be substituted with the following:

*"Provided that for the period beyond 2023-24, for the year 2024-25 & 2025-26, the tariff as applicable in 2023-24 shall remain applicable, if the energy is being supplied from these plants under the PPA period. For the period beyond the PPA period, the Tariff for Renewable Projects during the extended period as per Regulation 10 shall be applicable."*

- (2) The existing proviso of sub-regulation 88.2 shall be substituted with the following:

*"Provided that for the period beyond 2023-24, for the year 2024-25 & 2025-26, the tariff as applicable in 2023-24 shall remain applicable, if the energy is being supplied from these plants under the PPA period. For the period beyond the PPA period, the Tariff for Renewable Projects during the extended period as per Regulation 10 shall be applicable."*

- (3) The existing proviso of sub-regulation 88.3 shall be substituted

with the following:

*"Provided that for the period beyond 2023-24, for the year 2024-25 & 2025-26, the tariff as applicable in 2023-24 shall remain applicable, if the energy is being supplied from these plants under the PPA period. For the period beyond the PPA period, the Tariff for Renewable Projects during the extended period as per Regulation 10 shall be applicable."*

**Comments received:**

14.2 Tariff for all three biomass-based plants (23.5 MW) commissioned under GOR 1999 Policy has been determined together since RERC first order. The same procedure may be continued to determine the tariff after completion of 20 years of respective plants. Therefore, the tariff for FY 2024-25 and 2025-26 may be provided in the table, with the same rate of 5% escalation on the entire rate. The increase of 5% in tariff has been the prevailing practice in past and is the legitimate expectation from the Commission and is also required for regulatory certainty.

14.3 The existing proviso to regulation 88.2 should be substituted with the following:

*"Provided that for the period beyond 2023-24, for the year 2024-25 & 2025-26, the tariff as applicable in 2023-24 shall remain applicable will increase @5% every year, over the tariff for the year FY 2023-24, i.e., Rs 9.3124/kWh, if the energy is being supplied from these plants under the PPA period. For the period beyond the PPA period, the Tariff for Renewable Projects during the extended period the Commission will determine the tariff as per Regulation 10 (a & b) shall be applicable."*

14.4 There is no separate variable tariff under GOR 1999 Policy and hence, these plants have to bear the entire burden of increase of biomass price from Rs. 814/MT at the beginning of the operations to Rs 4500/MT at present. This aspect was considered by the Commission, and it was concluded that 5% escalation p.a. would be adequate for these plants. The rate of escalation has been consistently decided as 5% for 20 years, first by GOR Policy and then followed by the Hon'ble Commission till FY 2023-24.



14.5 Only 3 plants are operating under this Policy out of which PPA period is over in case of one plant and only small period of 2/ 3 years is remaining for other two plants. Thus, the financial implication is not substantial. These plants could survive only due to escalation of tariff by 5% p.a. and the same may be continued for their further survival till the end of PPA period.

14.6 While allowing escalation as well as tariff for the extended period note may be taken of the circumstances in which the biomass power plants under GOR 1999 Policy were installed without availability of proven technology which required them to incur substantial additional capital cost for stabilizing the operations and achieve normative PLF.

**Commission's views:**

14.7 We have considered the comments of the stakeholders.

14.8 The biomass power plants for which PPAs executed under the GoR Policy 1999 and commissioned before 30.09.2008 have single tariff with no separate variable charge component. As per regulation 88.2 the tariff for supply of electricity to the distribution licensee by such biomass power plants for FY 2023-24 is Rs. 9.3124/kWh and beyond this no tariff has been specified. In order to provide the regulatory certainty, the visibility of tariff beyond FY 2023-24 has to be provided. These are old plants which are covered neither in generic tariff nor in project specific tariff and do not have any authenticated data regarding their cost.

14.9 For the purpose of tariff for years beyond FY 2023-24 for the biomass projects set up under GoR Policy 1999 and whose PPA period is still remaining, in our view the tariff for the years 2024-25 & 2025-26, the tariff as applicable in 2023-24 shall remain applicable, if the energy is being supplied from these plants under the PPA period. Further, to mitigate the change in the cost of biomass fuel, in addition to above, an annual increase or decrease in variable charges, as the case may be, in Rs./kWh over the variable charges of the previous year keeping FY 2023-24 as the

base year for the respective technology in terms of regulation 43 of these Regulations shall also be allowed. These increase or decrease will be made based on the report of the State Level Committee (SLC) constituted by the Commission for the purpose of recommendation of Biomass fuel price and in our view that will balance the interest of both the generators and Discom.

14.10 Also, for the biomass projects set up under GoR Policy 1999 and whose PPA period is over, then the tariff to be made applicable during the extended period is also to be specified. It is noted from the generic tariff determined by the Commission for the biomass power plants commissioned during FY 2022-23 that around 63% component is of variable charges and 37% of the Fixed cost. When the Tariff for the year 2023-24 Rs. 9.3124/kWh is bifurcated in this ratio and also considering the proportion of O&M Expenses for 21<sup>st</sup> to 25<sup>th</sup> year in the Fixed cost of generic tariff for FY 2022-23, the total tariff works out to be 85% of the Rs. 9.3124/kWh. For the period beyond the PPA period, we consider the tariff during the extended period equivalent to the approximate 85 % of the tariff applicable for the last year tariff of the PPA duration as reasonable shall be applicable for these Renewable Projects. Further, here also in addition to above, an annual increase or decrease in variable charges, as the case may be, in Rs. /kWh over the variable charges of the previous year keeping FY 2023-24 as the base year for the respective technology in terms of regulation 43 of these Regulations shall also be allowed to these biomass power plants.

14.11 In view of the above, the proposed proviso to sub-regulations 88.1, & 88.3 of the Draft Regulations will be retained and proposed proviso to sub-regulation 88.2 of the Draft Regulations shall be modified as follows in the finalised Regulations:

- (1) The existing proviso of sub-regulation 88.1 shall be substituted with the following:

*"Provided that for the period beyond 2023-24, i.e., for the year 2024-25 & 2025-26, the tariff as applicable in 2023-24 shall remain applicable, if the*

energy is being supplied from these plants under the PPA period. For the period beyond the PPA period, the Tariff for Renewable Projects during the extended period as per Regulation 10 shall be applicable."

- (2) The existing proviso to sub-regulation 88.2 shall be substituted with the following proviso(s):

*"Provided that for the period beyond 2023-24, i.e., for the year 2024-25 & 2025-26, the tariff as applicable in 2023-24 shall remain applicable, if the energy is being supplied from these plants under the PPA period. In addition to above, an annual increase or decrease in variable charges, as the case may be, in Rs./kWh over the variable charges of the previous year keeping FY 2023-24 as the base year for the respective technology in terms of regulation 43 of these Regulations shall also be allowed.*

*Provided further that for the period beyond the PPA period, the tariff during the extended period shall be equivalent to the 85 % of the tariff applicable for the last year tariff of the PPA duration shall be applicable for the Renewable Projects. In addition to above, an annual increase or decrease in variable charges, as the case may be, in Rs./kWh over the variable charges of the previous year keeping FY 2023-24 as the base year for the respective technology in terms of regulation 43 of these Regulations shall also be allowed."*

- (3) The existing proviso of sub-regulation 88.3 shall be substituted with the following:

*"Provided that for the period beyond 2023-24,i.e., for the year 2024-25 & 2025-26, the tariff as applicable in 2023-24 shall remain applicable, if the energy is being supplied from these plants under the PPA period. For the period beyond the PPA period, the Tariff for Renewable Projects during the extended period as per Regulation 10 shall be applicable."*

## 15. **Regulation 93: Banking:**

### **Commission's Proposal:**

- 15.1 Commission in the draft Regulations proposed a new regulation 93.6 A shall be added below the existing sub-regulation 93.6 as under:

*"93.6A The above provisions of the banking shall be applicable till 31.03.2030 to all existing projects as well as the projects getting commissioned upto 31.03.2026.*

### **Comments received:**

- 15.2 The existing sub-regulation 93.6 A may be modified as under:

*93.6A The above provisions of the banking shall be applicable till the*

*useful life to all existing projects as well as the projects getting commissioned upto 31.03.2026.*

15.3 Generally, developer plans a project and execute PPA/EWA for the lifetime i.e., long term. However, the proposed clause affecting both new and existing RE developers/projects. Although the banking is allowed annually the new developers as per the clause 93.4.1 of Draft RERC RE Tariff Regulation (First Amendment) Regulations, 2023 will find difficulty in signing PPA with industrial/ commercial consumers as banking is allowed only till FY 2030, which creates an uncertainty for the investor by which ultimately the developer finds difficulty in finding his lender or financial institution for the development of his project. It is requested that the proposed clause may be removed, and banking provision may be allowed without any restriction of end date and also allow banking for the entire life of the project.

15.4 If a developer Commissions its RE project in FY 2024-25, in such a case the developer will only receive banking facility for five years. Failure to provide such facilities will inevitably result in operational and financial challenges, particularly a captive project.

15.5 It is requested to delete this clause as there is significant investment involved in setting up the Renewable projects and Banking provision may not be changed till the useful life of the project after commissioning of the Project. In addition, it will also encourage developers/consumers to install more RE projects and will help in strategic investment.

15.6 Discoms were allowed to deduct 10% of the banked energy towards banking charges. Commission has now proposed to not allow these banking charges after 31.03.2030 which will be detrimental to the Discoms. RE power is intermittent and if this power is banked then RE consumers (consuming solar and wind energy) will set up additional capacity and will bank this power with Discoms. They will then consume banked energy when power from their RE projects will not available. This will be much costlier than RE power. Banking Charges are, thus, necessary

to keep a check on excess injection and discourage such gaming by the RE consumers.

15.7 Regulation 93.6 defines the banking charges. It is understood that banking charges will be reviewed after 31.03.2030. The banking facility should be available for the life time of the project. The same is also mentioned in MNRE guidelines for Green Energy Open Access Rules 2022. Commission is requested to clarify the same that the banking facility shall be available for life time of all existing projects as well as projects getting Commissioned upto 31.03.2026.

15.8 Since the Commission has proposed for extension of control period of the till 31.03.2026 only and the fact that no rationale has been mentioned in the Explanatory Memorandum for extending the banking provision till 31.03.2030, it is recommended that the said provision may be aligned with other proposed amendments and thus may be revised to extend the banking provisions upto 31.03.2026 only.

**Commission's views:**

15.9 As regards the clarity sought by the stakeholders regarding the Banking facility proposed through regulation 93.6 A, it is stated that in order to provide regulatory certainty, Commission has proposed to continue with banking facility including charges up to 31.03.2030. Thereafter, the banking will be governed by the Regulations in force at that time.

15.10 Accordingly, the sub-regulation 93.6A proposed in the Draft Regulations is retained as follows in the finalised Regulations:

*"93.6A The above provisions of the banking shall be applicable till 31.03.2030 to all existing projects as well as the projects getting commissioned upto 31.03.2026."*

**16. Additional comments received:**

16.1 It is observed that additional comments/suggestions have been received on the provisions which were not the part of the proposal. As such

these are not part of the present proceedings, thus, Commission has noted the same and these will be considered in future Amendments.

17. In the light of the foregoing discussions, the finalized Regulations duly authenticated, placed below, may be got published in the Official Gazette.

18. Copy of this memo, along with the finalized Regulations, may be sent electronically and/or by post to the State Government, CEA, concerned Utilities and other stakeholders.

(Dr. Rajesh Sharma)  
Member

(Hemant Kumar Jain)  
Member

(Dr. B. N. Sharma)  
Chairman

**Annexure-I**

<b>S.No</b>	<b>Particulars</b>
1	Suryaa Chamball Power Ltd.
2	Indeen Bio Power Pvt Ltd
3	Rajasthan Biomass Power Developers Association
4	Nano Green Power Pvt. Ltd.
5	Chattargarh Renewable Energy Pvt. Ltd.
6	Jasrasar Green Power Energy Pvt. Ltd.
7	Sardarshahar Agri Energy Pvt. Ltd.
8	TNA Renewable Energy Pvt Ltd.
9	VCA Power Pvt. Ltd.
10	KTA Powers Pvt. Ltd.
11	Ib Vogt Solar India Pvt. Ltd.
12	Amplus Energy Solutions Pv.t Ltd
13	Indian Wind Turbine Manufactures Association(IWTMA)
14	Indian Wind Energy Association (InWEA)
15	Aditya Birla
16	Jaipur Vidyut Vitran Nigam Limited (JVVNL)
17	Rajasthan Urja vikas Nigam Limited (RUVNL)

**Annexure-II**

<b>S.No</b>	<b>Particulars</b>
1	Sh. Sanjay Bagrodia, Suryaa Chamball Power Ltd.
2	Sh.Varun Todi, Indeen Bio Power Pvt Ltd.
3	Sh.D.S.Agarwal, Rajasthan Biomass Power Developers Association(RBPDA)
4	Adv. Susan Mathew, Nano Green Power Pvt Ltd.
5	Sr. Adv. Hemant Sahai, Chattargarh Renewable Energy Pvt Ltd.
6	Sr. Adv. Hemant Sahai ,Jasrasar Green Power Energy Pvt Ltd.
7	Sr. Adv. Hemant Sahai, Sardarshahar Agri Energy Pvt Ltd.
8	Sr. Adv. Hemant Sahai, TNA Renewable Energy Pvt Ltd.
9	Sr. Adv. Hemant Sahai, VCA Power Pvt Ltd.
10	Sr.Adv. Hemant Sahai, KTA Powers Pvt Ltd.
11	Sh. Nitin Goyal, Ib Vogt Solar India Pvt Ltd.
12	Sh. Vivek Ranjan,Amplus Energy Solutions Pvt Ltd
13	Sh.Siva Krishna, Indian Wind Turbine Manufacturers Association (IWTMA)
14	Sh.Vikalp Vats, Indian Wind Energy Association (InWEA)
15	Sh.A.P.Bindal, Aditya Birla Cement
16	Adv. Sandeep Pathak, Jaipur Vidyut Vitran Nigam Limited (JVVNL)
17	Sh.Alok Pareek,Rajasthan Urja vikas Nigam Limited (RUVNL)



# RAJASTHAN STATE ELECTRICITY REGULATORY COMMISSION

## Notification

December ....., 2023

**No. RERC/Secy./Reg./.....** - In exercise of the power conferred under the Sections 61 and Section 62 read with Section 86 and Section 181 of the Electricity Act, 2003 (No. 36 of 2003) and all other powers enabling it in this behalf, the Rajasthan Electricity Regulatory Commission hereby makes the following Regulations to amend the RERC (Terms and Conditions for Determination of Tariff from Renewable Energy Sources) Regulations, 2020 (hereinafter referred to as the 'Principal Regulations') namely:

### **1. Short title, commencement and extent of application:**

- (1) These Regulations may be called the Rajasthan Electricity Regulatory Commission (Terms and Conditions for Tariff determination from Renewable Energy Sources) (Second Amendment) Regulations, 2023.
- (2) These Regulations shall come into force from the date of their publication in the Official Gazette.

### **2. Amendment in Regulation 1 of the principal Regulations:**

The main provision of the existing sub-regulation 1.2 shall be substituted with the following:

"1.2 These Regulations shall extend to the whole of the State of Rajasthan. These Regulations shall be applicable for determination of tariff in cases covered under these Regulations from April 1, 2020, and onwards up to March 31, 2026."

### **3. Amendment in Regulation 3 of the principal Regulations:**

The existing sub-regulation 3.2 shall be substituted with the following:

"3.2 Notwithstanding anything contained in these Regulations, the Commission shall adopt the tariff, if such tariff has been determined through a transparent process of bidding in accordance with the guidelines issued by the Central Government, as envisaged under Section 63 of the Act or where no such guidelines are issued by the Central Government, the tariff of such plants shall be adopted as has been determined through transparent bidding process in accordance with the bidding guidelines approved by the Commission."

### **4. Amendment in Regulation 5 of the principal Regulations:**

The main provision of the existing sub-regulation 5.1 shall be substituted with the following:

"5.1 The Control Period under these Regulations shall be of six (6) financial years starting from April 1, 2020, till March 31, 2026:"

**5. Amendment in Regulation 7 of the principal Regulations:**

The following new proviso shall be added below the existing provisos to sub-regulation 7.2 as under:

"Provided also that for procuring power from power plants of such technology where the competitive bidding guidelines have not been issued by the Central Government, including the biomass power projects, biomass gasifier-based power projects and biogas power projects except for the plants which are already commissioned or for which PPAs have been approved by the Commission before the date of notification of these Regulations, the distribution licensee shall carry out the competitive bidding process as per regulation 7.2 of these Regulations:

**6. Amendment in Regulation 8 of the principal Regulations:**

The existing proviso to sub-regulation 8.1 shall be substituted with the following:

"Provided that the generic tariff for the projects which are already commissioned or for which the PPAs have been approved by the Commission before the date of notification of these Regulations shall be applicable for such RE Projects of same type and shall remain valid for the tariff period as specified in regulation 6 above."

**7. Amendment in Regulation 43 of the principal Regulations:**

The existing proviso to sub-regulation 43.1 shall be substituted and a new proviso shall be added below the existing provision of sub-regulation 43.1 as under:

"Provided that the fuel cost arrived at as above shall be applicable to the Biomass power plants which are already commissioned or for which the PPAs have been approved by the Commission before the date of notification of these Regulations and also for the plants commissioned during the earlier Control Periods FY 2009-15 and FY 2015-20.

Provided further that for the Biomass power plants to be commissioned under the competitive bidding, the fuel price shall be governed by the bidding documents issued in accordance with regulation 7.2 above."

**8. Amendment in Regulation 44 of the principal Regulations:**

A new second proviso shall be added below the existing proviso to sub-regulation 44.2 as under:

"Provided further that usage of solar power shall be allowed only in those projects, where solar power projects are commissioned on or before 31.03.2026."

**9. Amendment in Regulation 88 of the principal Regulations:**

- (1) The existing proviso to sub-regulation 88.1 shall be substituted with the following:

"Provided that for the period beyond 2023-24, i.e., for the year 2024-25 & 2025-26, the tariff as applicable in 2023-24 shall remain applicable, if the energy is being supplied from these plants under the PPA period. For the period beyond the PPA period, the Tariff for Renewable Projects during the extended period as per Regulation 10 shall be applicable."

- (2) The existing proviso to sub-regulation 88.2 shall be substituted with the following proviso(s):

"Provided that for the period beyond 2023-24, i.e., for the year 2024-25 & 2025-26, the tariff as applicable in 2023-24 shall remain applicable, if the energy is being supplied from these plants under the PPA period. In addition to above, an annual increase or decrease in variable charges, as the case may be, in Rs./kWh over the variable charges of the previous year keeping FY 2023-24 as the base year for the respective technology in terms of regulation 43 of these Regulations shall also be allowed.

Provided further that for the period beyond the PPA period, the tariff during the extended period shall be equivalent to the 85 % of the tariff applicable for the last year tariff of the PPA duration shall be applicable for the Renewable Projects. In addition to above, an annual increase or decrease in variable charges, as the case may be, in Rs./kWh over the variable charges of the previous year keeping FY 2023-24 as the base year for the respective technology in terms of regulation 43 of these Regulations shall also be allowed."

- (3) The existing proviso to sub-regulation 88.3 shall be substituted with the following:

"Provided that for the period beyond 2023-24, i.e., for the year 2024-25 & 2025-26, the tariff as applicable in 2023-24 shall remain applicable, if the energy is being supplied from these plants under the PPA period. For the period beyond the PPA period, the Tariff for Renewable Projects during the extended period as per Regulation 10 shall be applicable."

**10. Amendment in Regulation 93 of the principal Regulations:**

A new regulation 93.6 A shall be added below the existing sub-regulation 93.6 as under:

"93.6A The above provisions of the banking shall be applicable till 31.03.2030 to all existing projects as well as the projects getting commissioned upto 31.03.2026."

By Order of the Commission

Secretary