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BIHAR ELECTRICITY REGULATORY COMMISSION
BIHAR ELECTRICITY REGULATORY COMMISSION (RENEWABLE PURCHASE OBLIGATION, ITS
COMPLIANCE AND REC FRAMEWORK IMPLEMENTATION) REGULATIONS, 2010.

NOTIFICATION

The 16th November 2010

No. **BERC-Regl-01/10-05**—In exercise of powers conferred under sections 61, 66, 86(1)(e) and 181 of the Electricity Act, 2003 and all other powers enabling it in this behalf, and after previous publication, the Bihar Electricity Regulatory Commission (hereinafter referred to as 'BERC' or 'Commission') hereby makes the following regulations namely:

1. *Short Title and Commencement*

- 1.1 These regulations may be called the Bihar Electricity Regulatory Commission (Renewable Purchase Obligation, its Compliance and REC Framework Implementation) Regulations, 2010.
- 1.2 These regulations shall come into force from the date of their publication in the Bihar Gazette.
- 1.3 These Regulations shall extend to the whole of the State of Bihar.

2. *Definitions and Interpretation:*

- 2.1 In these regulations, unless the context otherwise requires,
 - (a) 'Act' means the Electricity Act, 2003 (Act No.36 of 2003) and subsequent amendment thereof;
 - (b) 'Area of Supply' means the area within which the distribution licensee is authorized to supply electricity;

- (c) 'Central Agency' means the agency operating the National Load Dispatch Centre or such other agency as the Central Commission may designate from time to time;
- (d) 'Central Commission' means the Central Electricity Regulatory Commission referred to in sub section (1) of section 76 of the Act;
- (e) 'Certificate' means the renewable energy certificate issued by the Central Agency in accordance with the procedures prescribed by it and under the provisions specified in the Central Electricity Regulatory Commission (Terms and Conditions for recognition and issuance of Renewable Energy Certificate for Renewable Energy Generation) Regulations, 2010;
- (f) 'Commission' means the Bihar Electricity Regulatory Commission;
- (g) 'Distribution Licensee' means a licensee authorized to operate and maintain a distribution system for supplying electricity to the consumers in his area of supply;
- (h) 'Floor Price' means the minimum price as determined by the Commission in accordance with these regulations at and above which the certificate can be dealt in the power exchange;
- (i) 'Forbearance Price' means the ceiling price as determined by the Central Commission in accordance with the Central Electricity Regulatory Commission (Terms and Conditions for recognition and issuance of Renewable energy Certificate for Renewable Energy Generation) Regulations 2010 as amended from time to time, within which only the Certificate can be dealt in power exchange;
- (j) 'MNRE' means the Ministry of New and Renewable Energy; Government of India;
- (k) 'Obligated Entity' means the distribution licensee, consumer owning the captive power plants and open access consumer in the state of Bihar which is mandated to fulfill renewable purchase obligation under these Regulations;
- (l) 'Person' shall include any company or body corporate or association or body of individuals, whether incorporate or not, or artificial juridical person;
- (m) 'Power Exchange' means any exchange operating as the power exchange for electricity in terms of the orders issued by the Central Commission;
- (n) 'Preferential Tariff' means the tariff fixed by the Appropriate Commission for sale of energy from a generating station based on renewable energy sources to a distribution licensee;
- (o) 'Quantum of Purchase' means percentage share of total purchase of electricity from renewable energy sources as specified in these Regulations. The quantum would be the sum of all direct purchases from generating stations based on renewable energy sources and purchase from any other licensee, which would arise from renewable energy sources;
- (p) 'Renewable Energy Sources' means non-conventional, renewable electricity generating sources such as small/mini/micro/hydel, wind solar, biomass and bagasse based cogeneration, urban/municipal waste, or such other sources, (which are generally inexhaustible and can be replenished in a short period of time) as approved by the Ministry of New and Renewable Energy, Government of India or by the state of Bihar;
- (q) 'State' means the state of Bihar;

- (r) 'State Agency' means the agency in the State of Bihar as may be designated by the Commission to act as the agency for accreditation and recommending the renewable energy projects for registration and to undertake functions under these regulations;
- (s) 'Supply', in relation to electricity, means the sale of electricity to a licensee or a consumer;
- (t) 'Year' means a financial year.
- 2.2 The words and expressions used and not defined in these regulations but defined in the Act shall have meanings assigned to them in the Act. Expression used herein but not specifically defined in these Regulations or in the Act but defined in any other regulations issued by the Bihar Electricity Regulatory Commission shall have the same meaning assigned to them.
3. *Applicability of Renewable Purchase Obligation*
- 3.1 These regulations shall be applicable to :
- (i) Distribution licensee
- (ii) Any other person consuming electricity (a) generated from conventional Captive Generating Plant having capacity of 5MW and above for his own use and or (b) procured from conventional generation through open access and third party sale.
4. *Renewable Purchase Obligation*
- 4.1 Every obligated entity shall purchase not less than 1.5%, 2.5%, 4%, 4.5% and 5% of its total energy consumption (total energy input minus T&D losses) during 2010-11, 2011-12, 2012-13, 2013-14 and 2014-15 respectively from renewable energy sources under the Renewable Purchase Obligation or until reviewed by the Commission.
- Provided that 0.25% out of the renewable purchase obligation so specified in the year 2010-11 shall be procured from generation based on solar as renewable energy source and shall be increased at a rate of 0.25% every year thereafter till 2014-15 or until reviewed by the Commission.
- Provided further, such obligation to purchase renewable energy shall be inclusive of the purchases, if any, from renewable energy sources already being made by concerned obligated entity.
- Provided also that the power purchases under the power purchase agreements for the purchase of renewable energy sources already entered into by the distribution licensees and consented to by the Commission shall continue to be made till their present validity, even if the total purchases under such agreements exceed the percentage as specified hereinabove.
- 4.2 The Licensee shall generally source the mandatory percentage purchase from renewable sources within the State. If, however, they are not able to meet the purchase obligation from such sources located in the State, they shall have the option of purchase, the shortfall from outside the State. The energy generated from renewable sources in the State which is used by generator itself or sold to third party under open access, the same will be considered under the mandatory minimum percentage of power purchase.
- 4.3 The Licensee or its successor entities shall submit half yearly progress report on the capacity addition, purchase of electricity from such projects and the energy generated from renewable sources in the State which is used by generator itself or sold to third party under open access to the Commission and also post them on their website.

4.4 The Commission may, suo-motu or at the request of licensee, revise the percentage targets for a year as per clause 4.1 of these Regulations keeping in view supply constraints or other factors beyond the control of the licensee.

5. *Certificates under the Regulations of the Central Commission*

5.1 Subject to the terms and conditions contained in these regulations the Certificates issued under the Central Electricity Regulatory Commission (Terms and Conditions for recognition and issuance of Renewable Energy Certificate for Renewable Energy Generation) Regulations, 2010 shall be the valid instruments for the discharge of the mandatory obligations set out in these regulations for the obligated entities to purchase electricity from renewable energy sources.

Provided that in the event of the obligated entity fulfilling the renewable purchase obligation by purchase of certificates, the obligation to purchase electricity from generation based on renewable energy other than solar sources can be fulfilled by purchase of non-solar certificates and the obligation to purchase electricity from generation based on solar as renewable energy sources can be fulfilled by purchase of solar certificates only. If solar certificates are not available in a particular year, then in such cases, additional non-solar certificate shall be purchased for fulfillment of the Renewable Purchase Obligation (RPO).

5.2 Subject to such direction as the Commission may give from time to time, the obligated entity shall act consistent with the Central Electricity Regulatory Commission (Terms and Conditions for recognition and issuance of Renewable Energy Certificate for Renewable Energy Generation) Regulations, 2010 notified by the Central Commission in regard to the procurement of the certificates for fulfillment of the Renewable Purchase Obligation under these regulations.

5.3 The Certificates purchased by the obligated entities from the power exchange in terms of the regulation of the Central Commission mentioned in clause (5.1) of this Regulation shall be deposited by the obligated entities to the Commission within a month of the purchase of the certificate.

6. *State Agency*

6.1 The Commission shall designate an agency as the State Agency for accreditation and recommending the renewable energy projects for registration and to undertake functions under these regulations.

6.2 The State Agency shall function in accordance with the directions issued by the Commission and shall act in consistent with the procedures/rules laid by Central Agency for discharge of its functions under the Central Electricity Regulatory Commission (Terms and Conditions for recognition and issuance of Renewable Energy Certificate for Renewable Energy Generation) Regulations, 2010.

6.3 The State Agency shall submit quarterly status to the Commission in respect of compliance of renewable purchase obligation by the obligated entities in the format as stipulated by the Commission and may suggest appropriate action to the Commission if required for compliance of the renewable purchase obligation.

6.4 If the Commission is satisfied that the State Agency is not able to discharge its functions satisfactorily, it may by general or special order, and by recording reasons in writing, designate any other agency to function as State Agency as it considers appropriate.

7. *Distribution Licensee*

7.1 Each distribution licensee shall indicate, along with sufficient proof thereof, the estimated quantum of purchase from renewable energy sources for the ensuing year in tariff/annual performance review petition in accordance with Regulations

- notified by the Commission. The estimated quantum of purchase shall be in accordance with clause 4.1 of these Regulations. If the distribution licensee is unable to fulfill the obligation, the shortfall of the specified quantum of that year would be added to the specified quantum for the next year. However, credit for excess purchase from renewable energy sources would not be adjusted in the ensuing year.
- 7.2 Despite availability of renewable energy sources, if distribution licensee fails to fulfill the minimum quantum of purchase from renewable energy sources, it shall be liable to pay compensation as per clause 9 of these Regulations.
8. *Captive and Open Access User(s) / Consumer(s)*
- 8.1 The quantum of RPO mentioned in clause 4.1 shall be applicable to captive and open access user(s) / consumer(s) also.
- 8.2 Every Captive and Open access consumer(s) / user(s) shall have to submit necessary details regarding total consumption of electricity and purchase of energy from renewable sources for fulfillment of RPO on yearly basis on or before 30th April to the State Agency.
- 8.3 Captive and Open Access Consumer(s) / User(s) shall purchase renewable energy as stated in clause 4.1 of these Regulations. If the Captive user(s) and Open Access consumer(s) are unable to fulfill the criteria as specified in clause 7.2 of these Regulations the shortfall of the targeted quantum would attract payment of regulatory charge as pre clause 9.
- 8.4 Captive / Open Access consumer(s) / User(s) may fulfill its RPO through the renewable energy certificate as provided in clause 5 above.
9. *Effect of Default*
- 9.1 If an obligated entities does not fulfill the renewable purchase obligation as provided in these regulations during any year and also does not purchase the certificates, the Commission may direct the obligated entity to deposit into a separate fund, to be created and maintained by such obligated entity, such amount as the Commission may determine on the basis of the shortfall in units of RPO and the forbearance price decided by the Central Commission:
- Provided that the fund so created shall be utilized as may be directed by the Commission, partly for purchase of the certificates and partly for development of transmission/sub-transmission infrastructure for evacuation of power from generating stations based on renewable energy sources.
- Provided further that the obligated entities shall not be authorized to use the fund created in pursuance of the above, without prior approval of the Commission.
- Provided further that the Commission may empower an officer of the State Agency to procure from the Power Exchange the required number of certificates to the extent of the shortfall in the fulfillment of the obligations, out of the amount in the fund.
- Provided further also that if the obligated entities fails to deposit the amount directed by the Commission within 15 days of the communication of such direction, the obligated entities shall be in breach of its licence condition.
- 9.2 Where any obligated entity fails to comply with the obligation to purchase the required percentage of power from renewable energy sources or the renewable energy certificates, it shall also be liable for penalty as may be decided by the Commission under section 142 of the Act.

Provided that in case of genuine difficulty in complying with the renewable purchase obligation because of non availability of power in the State, the obligated entity can approach the Commission for carry forward of compliance requirement to the next year.

Provided further that where the Commission has consented to carry forward of compliance requirement, the provision of clause (9.1) of the Regulation or the provision of section 142 of the Act shall not be invoked.

10. Appointment of Compliance Auditors & Monitoring Committee

10.1 The Commission may appoint from time to time Compliance Auditors to inquire into and report on compliance of these Regulations. The Auditor shall also certify the fund operated by the State Agency and created under Regulation (9.1) of these Regulations.

10.2 The Commission may appoint Monitoring Committee to ensure compliance of these regulations from time to time.

11. Overriding Effect

Notwithstanding anything contained contrary to -

- (a) the BERC (Terms and Conditions for Determination of Tariff) Regulations, 2007; and
- (b) the BERC (Terms and Conditions for Open Access) Regulations. 2006; and
- (c) the order dated 21st May, 2009 and review order dated 29th June, 2010 in respect of Determination of Tariff for Bagasse based Cogen Plants and Biomass Power Plants, the terms and conditions stated therein.
- (d) the BERC (Terms and Conditions for Tariff Determination from Solar Energy Sources) Regulations 2010 and any other relevant regulations.

notified by the Commission under section 181 of the Electricity Act 2003; these regulations will have overriding effect.

12. Power to Remove Difficulties

If any difficulty arises in giving effect to any of the provisions of these regulations, the Commission may, either suo motu or on an application made to it, by general or special order, direct the licensee/ generator or any other person to take suitable action, not being inconsistent with the Act, which appears to the

Commission to be necessary or expedient for the purpose of removing the difficulty.

13. *Issue of Orders and Directions*

Subject to the provisions of the Act and these regulations, the Commission may, from time to time, issue orders and practice directions with regard to the implementation of these regulations and procedure to be followed for such implementation and matters incidental or ancillary thereto.

14. *Saving of Inherent Powers of the Commission*

Nothing contained in these Regulations shall limit or otherwise affect the inherent powers of the Commission to adopt a procedure, which is at variance with any of the provisions of these regulations, if the Commission, in view of the special circumstances of the matter or class of matters and for reasons to be recorded in writing, deems it necessary or expedient to depart from the procedure specified in these regulations.

15. *Power to Amend*

The Commission may from time to time add, vary, alter, suspend, modify, amend or repeal any provision of these regulations.

By the order of the Commission,

Sd./- Illegible,

Secretary.