

TAMIL NADU ELECTRICITY REGULATORY COMMISSION

Draft Notification No. TNERC/RPO/1-1/2024, dated 26-06-2024

(Comments/suggestions are invited on or before 25-07-2024)

The following draft of amendments to the Tamil Nadu Electricity Regulatory Commission (Renewable Energy Purchase Obligation) Regulations, 2023 (herein referred to as the Principal Regulations), which is proposed to be made in exercise of the powers conferred by section 181 read with sections 61, 66 and 86(1)(e) of the Electricity Act, 2003 (Central Act 36 of 2003) and all other powers enabling it in this behalf, is hereby published for information of all persons likely to be affected thereby, as required by subsection (3) of section 181 of the said Act.

Notice is hereby given that the draft amendment will be taken into consideration after expiry of thirty days from the date of publication of this Notification in the TNERC website and that any objection or suggestion, which may be received from any person before the expiry of the aforesaid period, will be considered by the Commission.

Objection or suggestion, if any, should be addressed in duplicate along with a soft copy to the Secretary, Tamil Nadu Electricity Regulatory Commission, 4th Floor, SIDCO Corporate Office Building, Thiru Vi Ka Industrial Estate, Guindy, Chennai-600032 (email id- tnerc@nic.in).

Amendments

1. (a) This Regulation may be called Tamil Nadu Electricity Regulatory Commission (Renewable Energy Purchase Obligation) (Amendment) Regulation, 2024;

(b) It shall come into force on the date of commencement of the Tamil Nadu Electricity Regulatory Commission (Renewable Energy Purchase Obligation) Regulations, 2023.

2. Amendment to the Regulation 2 of the Principal Regulations:

For clause (i) of Sub-Regulation (1) of Regulation 2 of the Principal Regulations, the following clause shall be substituted, namely:-

(i) 'Pooled cost of power purchase' means the weighted average pooled price at which the distribution licensee has purchased the electricity including cost of self generation in the previous year from all the long-term energy suppliers, but excluding those based on liquid fuel, purchase from traders, short-term purchases and renewable energy sources.

Provided when the Average Pooled cost of Power Purchase (APPC) of the Distribution Licensee exceeds the preferential rate fixed by the Commission to that category/sub-category of NCES generators for the corresponding year, the Pooled Cost of Power Purchase for such year shall be 75% of the preferential tariff rate fixed by the Commission for the respective year of commissioning of NCES generators;

(By order of the Commission)

Sd/- dated 26-06-2024

Secretary

Tamil Nadu Electricity Regulatory Commission

Explanatory Statement

1. In the recent years, the Pooled Cost of Power Purchase of the TANGEDCO has exceeded the preferential tariff fixed by the Commission for Renewable Energy (especially for wind and solar) due to escalation of conventional fuel cost. It is therefore, necessary that a limit has to be fixed for arriving at the reasonable Pooled Cost of Power Purchase.

2. The Hon'ble High Court of Madras in its judgement in W.P.No. 22097 of 2013 held that the amendment to the TNERC (Renewable Energy Purchase Obligation) Regulations, 2010 (regarding ceiling of APPC rate to the 75% of the preferential tariff) issued by the Commission vide Notification No. TNERC/RPO/19/3, dated 21-01-2013 can be implemented with effect from the date of breach of APPC over the preferential tariff fixed by the Commission. The relevant portion of the Order of the Hon'ble High Court is reproduced as below:

“31. The next contention of the petitioner is that the actual need as not arrived for the 1st respondent to effect the notification as the APPPC has not breached the preferential tariff. Also it was contended that the REC can be sold at higher rate is far from truth and huge stocks of REC remain unsold. Again, this court cannot venture into the reasons regarding the unviability of the REC in the market. This court taking judicial note of the happenings in the world regarding the climate change and the need for sustainable development, could only see a continuing market for environmental component or carbon credit throughout the world. Hence for all the reasons stated above, the challenge to the notification 21.01.2013 fails. In view of the fact that the order dated 15.07.2013 fixing the preferential tariff at Rs 3.11 has been passed in exercising the rights under the Act and the Regulations and following the proceedings dated 21.01.2013, the challenge to the same would also fail. However, this court finds force in the submission of the counsel for the petitioner that considering the object to introduce the cap, the need to implement cap has not arrived. The impugned notification has been enacted in public interest to prevent the generators to unjustly enrich themselves, in the event of the preferential tariff falling below the APPPC. Therefore, this court is of the view that the notification can be implemented with effect from the date of such breach as notified by the TNERC. Therefore, granting liberty to the petitioners to move the TNERC for appropriate directions, the writ petitions are dismissed.”

3. Further, the Hon'ble Appellate Tribunal for Electricity in its order dated 31-05-2019 in Appeal No. 232 of 2017 held that when the APPC rate crosses the rate of preferential tariff of the corresponding year, 75% of the preferential tariff rate may be approved.

The relevant portions of the APTEL findings are as below:

“12. Summary of our Findings:

In light of the above, we sum up our findings as under:-

12.1 The notification dated 19.06.2013 which amended the definition of the APPC shall not be given effect to in as much as till date, the APPC of a year has not exceeded the preferential tariff payable to wind generators for that corresponding year.

12.2 Being dynamic in nature (which may go up or down), the APPC rate shall be compared by the State Commission on year to year basis and the proposed cap of 75% under the amendment shall be implemented for a particular year in which APPC rate crosses over the rate of preferential tariff for that corresponding year.

12.3 The State Commission is directed to issue necessary instructions to Respondent No. 1 to make payment to the Appellant at the full APPC rate without applying any cap, for the relevant period, together with normal interest thereon at the rate provided for in the EPA from the date such capped tariff was effected by Respondent Discom until date of payment to the Appellant.”

4. The above judgement of the APTEL was challenged by the TANGEDCO before the Hon'ble Supreme Court of India vide Civil Appeal No. 9268 of 2019 and the Hon'ble Supreme Court has not given any stay on the above judgment to the APTEL.

5. Meanwhile, the Commission has accepted the views of the APTEL in its orders in M.P.No. 22 of 2016 and DRP No. 7 of 2021.

6. Accordingly, this amendment seeks to incorporate the revised definition of Pooled Cost of Power Purchase in the Tamil Nadu Electricity Regulatory Commission (Renewable Energy Purchase Obligation) Regulations, 2023.

(By order of the Commission)

Sd/- dated 26-06-2024
Secretary
Tamil Nadu Electricity Regulatory Commission