

OPINION

Forum of Regulators

Through: Central Electricity Regulatory Commission ... Querist

1. The Querist has sought my opinion on certain issues pertaining to the obligation to purchase electricity from renewable sources, proposed to be imposed under the Electricity Act 2003 (the "Act").

The Regulatory Framework

2. Section 86(1)(e) of the Act provides:

86(1). The State Commission shall discharge the following functions, namely:

...

(e) promote cogeneration and generation of electricity from renewable sources of energy by providing suitable measures for connectivity with the grid and sale of electricity to any person, and also specify, for purchase of electricity from such sources, a percentage of the total consumption of electricity in the area of a distribution licensee;

3. It is apparent from the above provision that the Commission is required to specify that a certain percentage of the total consumption of electricity in the area of a distribution licensee shall be purchased from electricity generated from renewable sources. This is known as the Renewable Purchase Obligation ("RPO").
4. Under Section 3 of the Act, the Central Government has formulated the National Electricity Policy and the Tariff Policy. Both these policies

recognise that since it will take some time for non-conventional electricity generators to compete effectively with conventional generators, the Appropriate Commission may determine differential/preferential tariffs to promote these technologies.¹

5. The Querist constituted a Working Group to examine in detail the issues pertaining to promotion of renewable sources of energy and make recommendations in this regard. Based on the Working Group's report, the Querist decided that the minimum RPO should be 5%. (This was also in line with the National Action Plan on Climate Change, formulated by the Central Government.)²
6. The Querist recognised that renewable sources of energy vary widely from one State/region to another. Hence, in some States, it would be easy to meet the RPO of 5% (and in fact purchase may exceed the RPO) whereas in other States, it would be difficult to meet the RPO. Hence, the Querist decided to introduce the concept of a tradable Renewable Energy Certificate ("REC"). Renewable energy generators would be issued RECs to the extent of power sold by them over and above the RPO. This REC will be tradable, i.e. it can be sold to purchasers in States where it is difficult to meet the RPO. The REC value is determined by a free market price discovery process through a "power exchange". In this manner, it can be ensured that renewable energy generators recover their costs, and the RPO is in effect achieved in all States.

¹ See para 5.12 of the National Electricity Policy and para 6.4 of the Tariff Policy.

² See para 4.2.2 of the National Action Plan for Climate Change.



सत्यमेव जयते

GOPAL SUBRAMANIAM

महा-सॉलिसिटर भारत
SOLICITOR-GENERAL OF INDIA

Analysis

7. In the backdrop of the above regulatory framework, the first query posed is whether the RPO should be imposed on distribution licensees alone, or also on captive generation consumers and open access consumers. These two categories of consumers do not purchase electricity from the distribution licensee in whose area they are situated. Captive generation consumers generate their own electricity (see Section 9 of the Act), and open access consumers are eligible consumers who can purchase electricity from sources other than the distribution licensee in whose area they are situated (see Section 42 of the Act).
8. In my opinion, the RPO can and should be imposed on these two categories of consumers as well. The rationale is that the RPO, as envisaged under Sec. 86(1)(e), is a percentage of *consumption* – the category of the *consumer* is not material. The policy directive is to ensure that 5% of the total electricity consumed has been generated from renewable sources. In order to achieve this policy objective, it will not be sufficient to impose the RPO on distribution licensees alone, because then in absolute terms 5% of the total electricity consumed would not have been generated from renewable sources. Furthermore, if the RPO is not imposed uniformly, it will be unfair to consumers without open access, as they alone will be bearing the cost of renewable energy procurement.
9. It must of course be acknowledged that Section 49 gives open access consumers the freedom to purchase electricity from “any person”.



सत्यमेव जयते

GOPAL SUBRAMANIAM

महा-सॉलिसिटर भारत
SOLICITOR-GENERAL OF INDIA

Imposing an RPO does operate as a restriction on this freedom, since 5% of the total consumption has to be from renewable energy generators (or be compensated by purchasing RECs). However, in my view this is a permissible restriction. The National Telecom Policy and the Tariff Policy are the guiding principles for the entire Act, and this limited restraint imposed, which is clearly in national, environmental and public interest, cannot be considered a violation of Section 49. Furthermore, it must be noted that the preferential tariff determined by the Commission will not be binding on open access consumers, by virtue of the proviso to Section 86(1)(a). Hence, there can be no objection on that count either. This analysis would also apply, *mutatis mutandis*, to captive generation consumers, who under Section 9 of the Act enjoy the same freedom from regulation.

10. The second query relates to the implementation of the RPO through the REC. The Querist has suggested that where a licensee/consumer has failed to meet the RPO and has also not purchased the REC, the State Commission can direct such licensee/consumer to deposit the price of the REC into a separate fund, which shall be used "partly for purchase of the certificates and partly for development of transmission infrastructure for evacuation of power from generating stations based on renewable energy sources". The query is whether this would amount to imposing a penalty under regulations without statutory backing.
11. In my opinion, though the proposal has the colour of a penalty (since it is essentially triggered on default), it is in substance a regulatory measure

designed to compensate the market mismatch caused by the licensee in question. It has been clearly specified that the fund will be used only for two purposes – purchase of REC and development of transmission infrastructure, which are short-term and long-term measures to reduce the cost/revenue mismatch faced by renewable energy generators. Hence, it is really a compensatory measure and not a penalty. This may be contrasted with Section 142, which specifically provides that the Commission may impose a penalty for breach of Regulations.

Conclusions


12. In light of the above, my opinion on the queries posed is as follows:

(1) The RPO under Section 86(1)(e) can be imposed, in addition to distribution licensees, on open access consumers and captive generation consumers.

(2)-(5) The RPO regime can be strengthened by empower the Commission to require defaulting licensees to deposit the price of the REC as proposed by the Querist. This would not be a penalty but rather a regulatory/compensatory measure. The model regulation is therefore in order.

13. I have nothing further to add, at this stage.

2nd September 2009
New Delhi


(GOPAL SUBRAMANIAM)