

N0.45/2/2006-R&R  
Government of India  
Ministry of Power

New Delhi, the 28th March 2006

To

Shri A.K. Sachan,  
Secretary ,  
Central Electricity Regulatory Commission,  
SCOPE Complex, Lodhi Road,  
New Delhi

**Subject: Tariff Policy under the Electricity Act 2003**

Sir,

I am directed to refer to CERC's letter No. 1/20(6)2006 Tariff/Policy/CERC dated 2.2.06 requesting for clarification under the provisions of para 5.1 of the Tariff Policy (notified on 6.1.06) which reads as under:

“ . . . . . All future requirement of power should be procured competitively by distribution licensees except in cases of expansion of existing projects or where there is a State controlled/owned company as an identified developer and where regulators will need to resort to tariff determination based on norms provided that expansion of generating capacity by private developers for this purpose would be restricted to one time addition of not more than 50% of the existing capacity. . . . . ”

2. This matter has been considered taking into account the suggestions of the CERC and all relevant aspects. Accordingly, it is hereby clarified that the power generation projects which satisfy any of the following conditions would be well within this provision of the Tariff Policy:

- i) Where the Power Purchase Agreement (PPA) has been signed and approved by the Appropriate Commission prior to 6.1.06 or PP A has been signed and is pending before the Appropriate Commission on 6.1.06, such procurement would be treated as falling outside the scope of clause 5.1 of Tariff Policy as contractual obligation for procurement of power has been firmly established in such cases.
- ii) Similarly, where the appraisal of any power project has started before 6.1.2006 by the relevant financial institutions for lending funds to the project on the basis of appropriate evidence of process of procurement of power by any utility, such procurement would be treated as falling outside the scope of clause 5.1 of the Tariff Policy provided that in all such cases final PP A is filed before the Appropriate Commission by 30th September, 2006.

- iii) In case of hydro projects where detailed project report (DPR) has been submitted to the CEA/CWC before 6.1.06 for concurrence (except for projects where concurrence of DPR is not mandatory) and appropriate evidence of process of procurement of power by any utility exists before 6.1.2006, such procurement would be treated as falling outside the scope of clause 5.1 of Tariff Policy, provided that in all such cases the final PPA is filed before the Appropriate Commission by 30th September, 2006.

Yours faithfully,

Sd/  
(Alok Kumar)  
Director (R&R)  
Ph.: 2371 4000

No. 45/2/2006-R&R  
Government of India  
Ministry of Power

Shram Shakti Bhawan, Rafi Marg,  
New Delhi, 15<sup>th</sup> February, 2008

To

The Secretary,  
Central Electricity Regulatory Commission,  
Core-3, Scope Complex,  
Lodhi Road, New Delhi.

Subject: Tariff Policy under Electricity Act, 2003 – Clarification.

Sir,

Please refer to the clarification issued by the Ministry of Power under the provisions of the para 5.1 of the Tariff Policy vide letter No. 45/2/2006-R&R dated 28.3.2006.

2. An issue had arisen recently as to what would be the status of those PPAs which stood legally concluded before the notification of the Tariff Policy on 6<sup>th</sup> January, 2006. The issue has been examined in consultation with the Department of Legal Affairs. It has been advised that the provisions of the Tariff Policy would not alter the legal enforceability of the already concluded contracts unless until it is mutually altered on agreeable terms and conditions.

Yours faithfully,

Sd/-  
(Alok Kumar)  
Director  
Tel: 2371 4000

Copy to: Secretaries of all the SERCs.

No. 23/2/2005-R&R (Vol-V)  
Government of India  
Ministry of Power

Shram Shakti Bhawan, Rafi Marg,  
New Delhi, 29<sup>th</sup> November, 2010

To

The Chief Secretary,  
Government of Karnataka,  
Bangalore.

Subject: Clarification sought by Government of Karnataka regarding provisions of Tariff Policy.

Sir,

I am directed to refer to the Government of Karnataka's letter No. EN 52:PPC 2010 dated 8.11.2010 seeking clarification whether procurement of power by the distribution companies from the developers with whom MoUs have been signed, is legally permissible in view of the provisions of the Tariff Policy and to say that provision of clause 5.1 of the Tariff Policy notified on 6.1.2006 stipulate as under:

“All future requirement of power should be procured competitively by distribution licensees except in cases of expansion of existing projects or where there is a State controlled/owned company as an identified developer and where regulators will need to resort to tariff determination based on norms provided that expansion of generating capacity by private developers for this purpose would be restricted to one time addition of not more than 50% of the existing capacity.

Even for the Public Sector projects, tariff of all new generation and transmission projects should be decided on the basis of competitive bidding after a period of five years or when the Regulatory Commission is satisfied that the situation is ripe to introduce such competition.”

2. In view of the above provisions it is clear that procurement of power by distribution licensees is to, be done, through competitive bidding as mentioned above. As regards the MOUs signed by PSUs/ CPSUs are concerned, unless these are converted into PPAs by the stipulated date further procurement only on MOU/cost plus basis would be incorrect.

Yours faithfully

Sd/-

(C.J. Jose)

Under Secretary to the Government of India

Tel: 2373 0265

No. 23/2/2005-R&R (Vol-V)  
Government of India  
Ministry of Power

Shram Shakti Bhawan, Rafi Marg,  
New Delhi, 9<sup>th</sup> December, 2010

To

1. Chairperson, Central Electricity Authority, New Delhi.
2. Principal Secretary/Secretary(Energy) of State Governments/UTs.
3. Secretary, Central Electricity Regulatory Commission, New Delhi.
4. Secretary, State Electricity Regulatory Commissions.
5. Chairmen, State Power Utilities/SEBs.
6. Chairmen, CPSUs under Ministry of Power.

Subject: Clarification regarding clause 5.1 and 7.1 of Tariff Policy – regarding.

Sir,

The issue of competitive bidding route for PSUs/CPSUs beyond five years after the implementation of Tariff Policy as provided in para 5.1 and 7.1 of the Tariff Policy was discussed in the meeting of Group of Ministers on Power Sector Issues held on 29.10. 2010 and the following decision was taken:

“States should fully migrate to procurement of power by Discoms through tariff based competitive bidding both for public & private sector generation and transmission projects. For the sake of abundant clarity, MoP would issue a clarification regarding the permitted exemptions in the Tariff Policy for the expansion/upgradation of projects, excluding the hydro sector.”

2. The Central Government notified Tariff Policy under section 3 of the Electricity Act, 2003 on 6<sup>th</sup> January, 2006. The relevant provisions of the Clause 5.1 of Tariff Policy is reproduced as under:

“..... All future requirement of power should be procured competitively by distribution licensees except in cases of expansion of existing projects or where there is a State controlled/owned company as an identified developer and where regulators will need to resort to tariff determination based on norms provided that expansion of generating capacity by private developers for this purpose would be restricted to one time addition of not more than 50% of the existing capacity.

Even for the Public Sector projects, tariff of all new generation and transmission projects should be decided on the basis of competitive bidding after a period of five years or when the Regulatory Commission is satisfied that the situation is ripe to introduce such competition.....”

The sub-clause 6 of Clause 7.1 of the Tariff Policy provides that:

“...The tariff of the projects to be developed by CTU/STU after the period of five years or when the Regulatory Commission is satisfied that the situation is right to introduce such competition (as referred to in para 5.1) would also be determined on the basis of competitive bidding.”

3. The above provisions are sufficiently clear with regard to the applicability of tariff based competitive bidding for the projects in the generation and transmission sectors and clarifications in this regard have also been issued in the past. However, in view of the decision taken in the meeting of the Group of Minister on Power Sector held on 29.10.2010, it is clarified that the following are exempted from the tariff based competitive bidding route.
  - (A) Generation (excluding hydro) projects of PSUs/CPSU:
    - i) The expansion of already commissioned projects.
    - ii) Projects for which the PPA(s) have been signed on or before 5.1.2011.
  - (B) Transmission Projects of STUs/CTU:
    - i) The upgradation/strengthening of the existing “transmission lines” and associated sub-stations.
    - ii) Projects for which BPTA(s)/TSA(s) have been signed on or before 5.1.2011.
4. These clarifications are to be read alongwith the relevant provisions in the Electricity Act, 2003 and the Tariff Policy.
5. This issues with the approval of Hon’ble Minister of Power.

Yours faithfully,  
Sd/-  
(Pranay Kumar)  
Director  
Tel : 2371 5250

No. 23/2/2005-R&R (Vol-V)  
Government of India  
Ministry of Power

Shram Shakti Bhawan, Rafi Marg,  
New Delhi, 19<sup>th</sup> April, 2011

To

1. Chairperson, Central Electricity Authority, New Delhi.
2. Principal Secretary/Secretary(Energy) of State Governments/UTs.
3. Secretary, Central Electricity Regulatory Commission, New Delhi.
4. Secretary, State Electricity Regulatory Commissions.
5. Chairmen, State Power Utilities/SEBs.
6. Chairmen, CPSUs under Ministry of Power.

Subject: Clarification regarding para 6.4 of the Tariff Policy – regarding.

Sir,

A clarification regarding clause 5.1 and 7.1 of the Tariff Policy was issued by this Ministry vide communication dated 9.12.2010 which is available on the website of the Ministry ([www.powermin.nic.in](http://www.powermin.nic.in)).

2. Representations have been received for seeking further clarification regarding provisions for procurement of power from hydro projects and non-conventional sources of energy generation.
3. The provisions of Tariff Policy under para 6.4 in respect of “Non-conventional sources of energy generation including Co-generation” (*as amended vide resolution dated 20.1.2011*) are as under:
  - (1) Pursuant to provisions of section 86(1)(e) of the Act, the Appropriate Commission shall fix a minimum percentage of the total consumption of electricity in the area of a distribution licensee for purchase of energy from such sources, taking into account availability of such resources in the region and its impact on retail tariffs. Such percentage for purchase of energy should be made applicable for the tariffs to be determined by the SERCs latest by April, 2006.
    - (i) Within the percentage so made applicable, to start with, the SERCs shall also reserve a minimum percentage for purchase of solar energy from the date of notification in the Official Gazette which will go up to 0.25% by the end of 2012-13 and further up to 3% by 2022.
    - (ii) It is desirable that purchase of energy from non-conventional sources of energy takes place more or less in the same proportion in different States. To achieve this objective in the current scenario of large availability of such resources only in certain parts of the country, an appropriate mechanism such as Renewable Energy Certificate (REC) would need to be evolved. Through such a mechanism, the renewable energy based generation companies can sell the electricity to local distribution licensee at the rates for conventional power and can recover the balance cost by selling certificates to other distribution companies and obligated entities enabling the latter to meet their renewable power purchase obligations. In view of

the comparatively higher cost of electricity from solar energy currently, the REC mechanism should also have a solar specific REC.

- (iii) It will take some time before non-conventional technologies can compete with conventional sources in terms of cost of electricity. Therefore, procurement by distribution companies shall be done at preferential tariffs determined by the Appropriate Commission.
  - (2) Such procurement by Distribution Licensees for future requirements shall be done as far as possible, through competitive bidding process under Section 63 of the Act within suppliers offering energy from same type of non-conventional sources. In the long-term, these technologies would need to compete with other sources in terms of full costs.
  - (3) The Central Commission should lay down guidelines within three months for pricing non-firm power, especially from non-conventional sources, to be followed in cases where such procurement is not through competitive bidding.
4. Further, CERC has already notified 'Terms and Conditions for Tariff determination from Renewable Energy Sources Regulations on 16<sup>th</sup> September, 2009 (amended vide notification dated 25th February, 2010), which are applicable for generation of power from renewable sources such as small hydro, wind, solar including its integration with combined cycle, biomass, bio fuel generation, urban or municipal waste and other such sources as approved by the MNRE. These regulations are available on the website of CERC i.e. [www.cercind.gov.in](http://www.cercind.gov.in).
  5. It is clear from the provisions of the Tariff Policy that as far as possible, future procurement of power from non-conventional sources of energy shall be done through competitive bidding process under section 63 of the Act within suppliers offering energy from same type of non-conventional sources. In the long term, these technologies would need to compete with other sources in terms of full costs. However, keeping in view the less developed non-conventional technologies presently vis-à-vis technologies of conventional sources in terms of cost of electricity, the policy provides that procurement by distribution companies may be done at preferential tariffs determined by the Appropriate Commission depending on the circumstances at the time of procurement.
  6. The clarification issued vide this Ministry's letter dated 9.12.2010 does not in any way alter the existing provisions of Tariff Policy.
  7. The above clarification may be read alongwith the relevant provisions of the Electricity Act, 2003, Policies and other applicable regulations issued by the Appropriate Commission.

Yours faithfully,  
Sd/-  
(Pranay Kumar)  
Director  
Tel : 2371 5250