

# Comments on MoP's Revised Draft Gazette Notification on Renewable Consumption Obligation (RCO) under the Energy Conservation Act, 2001

Prayas (Energy Group), 19<sup>th</sup> August, 2025

The Ministry of Power (MoP) issued a [revised draft RCO notification](#), on 5<sup>th</sup> August, 2025 and invited comments by 19<sup>th</sup> August 2025. We have some suggestions and comments on the same. We first give a summary of our key comments followed by detailed explanation:

1. Buyout price
  - Buyout price should be considered only as a last option, when RE capacity and RECs are exhausted by DCs and meeting other pre-conditions, detailed in section 1 below. Additional information can be asked from such DCs to verify such claims.
  - Considering legal issues related to involving CERC in determining buyout price, we suggest MoP or BEE should determine buyout price, in consensus with SERCs. The price should be more than the prices discovered for RECs (at least by 10-15%).
  - Need of sunset clause for buyout price to reduce its impact on RE capacity addition in the country
2. Exemption for waste heat recovery for CPP
  - The definition of consumption, esp. for CPP should be as simple as possible with no exemptions.
  - Reconsider exemption for waste heat recovery and fossil-fuel based co-generation, considering various orders by APTEL on application of RPO for such sources.
  - If at all exemptions are to be provided, such exemptions should be allowed with sunset or phase-out clauses.
3. Aggregate compliance
  - The concept sounds interesting, however probable benefits will be overshadowed by the complexities, which include jurisdictional issue for non-compliance proceedings, sharing of penalties amongst DCs, undue advantage and complexities in determining compliance in case compliance allowed across sectors (like steel, Aluminum, DISCOMs, etc.).
  - Each unit is reporting separately under PAT, hence, the process can be continued for RCO compliance as well.
  - Clarity needed on single-buyer model (power procurement for DISCOMs in a state)
4. Clarity about Penalty fund
  - Separate fund should be maintained at national level. This will ensure better monitoring, accounting and transparency of funds and its utilization.
  - Sharing of penalty fund with state government will avoid further legal and other complications between the Centre and the States.
5. Some additional points which need consideration by MoP/ BEE

The detailed comments and suggestions on the revised notification can be found below:

## 1. Buyout Price

Under clause 9, the draft notification specifies payment of buyout price as an option to fulfill RCO, which is given below:

*“Designated Consumers may fulfil the specified Renewable Consumption Obligation through one or more of the following methods:*

- i. Consumption of renewable electricity, either directly or through an energy storage system;*
- ii. Purchase of Renewable Energy Certificates (RECs) issued in accordance with regulations notified by the Central Electricity Regulatory Commission (CERC) including RECs acquired under Virtual Power Purchase Agreements (VPPAs); and*
- iii. **Payment of the buyout price specified by CERC.***

*Provided that the sums received through the buyout mechanism shall be credited to the Central Energy Conservation Fund under a separate head, from which fifty percent of the amount shall be transferred to the respective State Energy Conservation Fund. Appropriate Government shall utilize these sums to support the development of specified renewable energy sources and storage capacities.”*

This option was floated in the March 2025 draft amendment as well, however this time the proceeds will be shared between the Centre and state governments. The option of buyout price is certain to lead to a lot of legal and jurisdictional complications between the Centre and States. We highlight few concerns with this option.

- **‘Payment of the buyout price’** is essentially akin to a penalty by a different name since this mechanism does not translate to any actual RE capacity addition in the country. Neither does it have any equivalent RE generation like the REC mechanism.
- More importantly, there is **no mention of CERC at all in EC Act 2001**. As there is no defined function or role of CERC, under which section of EC Act can CERC come up with a regulatory framework for the buyout price? Thus, allowing this through an amendment to the Oct, 2023 Notification should be reconsidered considering the likely legal challenges.
- The Act provides adjudication power to SERCs under section 26(3), which empower them to levy penalty in case of non-compliance. However, through buyout mechanism, which is essentially a form of penalty, this **role of SERC is being undermined**.
- The buyout price is presently not defined, however if it is defined in terms of an absolute value in Rs/kWh, it will **strongly further depress the REC market if the buy-out price is low**.
- Finally, there is **no sun-set clause for the buyout price proposal**. In case it is allowed without any sunset date, the mechanism will hamper prospects of meeting the 500 GW RE goal by 2030 and any future RE targets envisaged by the Central government.

Unfortunately, the reality of RPO non-compliance penalties levied by SERCs in the past is not encouraging. Despite the new RCO targets being announced in Oct 2023 with the likelihood of much higher penalties (upper limit of Rs 3.72/kWh), there is still an inventory of ~ 37 mn RECs and ~62 mn RECs have been either redeemed or retained (out of which, 35 mn done in FY 24-25 and remaining 27 mn in this FY till July 2025)<sup>1</sup>. RECs traded through power exchanges were done at a price lower than Rs 500/REC, i.e. below Rs 0.5/kWh. **This underscores the lack of seriousness in the entire RPO-RCO**

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<sup>1</sup> Based on data compiled from REC registry, [https://www.recregistryindia.nic.in/index.php/publics/recs\\_dec](https://www.recregistryindia.nic.in/index.php/publics/recs_dec)

**mechanism.** If obligated entities or designated consumers have not rushed in to buy RECs, when available at such low prices, **they are unlikely to step up to pay the buyout price when the reality of SERCs non-compliance penalties has been practically non-existent.**

Instead of the proposed Buyout Price suggested in the amendment which would be decided by CERC, we propose an alternative.

*Relax penalty (akin to a Modified Buyout) for FY 25 & FY 26 subject to strict pre-conditionalities*

a) RE & Storage project gestation period is around 1.5-2 years. As a one-time measure, MoP/BEE could consider reducing the penalty for RPO non-compliance for FY 24-25 and FY 25-26 for those DISCOMs who demonstrate adequate RE capacity tied up in the form of signed PPAs (at the time of RCO compliance checking/auditing) for the requisite RE demand (with RCO of 35.95 %) for the year FY 26-27. If DISCOMs can reliably demonstrate this to SERCs/BEE/MoP, MoP should consider reducing the penalty for the first two years for the non-compliance in these years to ~10-15% of the upper cap of the penalty, i.e. 2 times the mtoe price (Rs 3.72/kWh). This would be ~ Rs 0.37-0.55/kWh. MoP would need to build a strong consensus among States and SERCs for this will not be possible unless most States agree for a uniform approach for non-compliance.

**This is similar to the 'buyout price' proposed.** However, we suggest that such a reduced penalty should be allowed only subject to the following conditions, namely

1. DCs demonstrate adequate RE capacity tied up in the form of **signed PPAs** (at the time of RCO compliance checking/auditing) for the requisite RE demand (with RCO of 35.95 %) for the year FY 26-27.
  2. DCs should be eligible for this **reduced penalty option if and only if all RECs have been exhausted from the system.** There are presently 37 million RECs available in the market, as mentioned above. All of these could potentially be purchased since the shortage of RE for FY 25 is very likely to be over 100 BU.
  3. The buy-out price option should be available for a limited period with a **sunset clause** and hence only for non-compliance for FY 25 and FY 26.
  4. The actual buyout price – could be linked to the REC trading price, **such that it is 10-20% higher than the average/highest REC price for the year for which compliance is being assessed.** This could be notified as the minimum buy-out price by the BEE/MoP. If the buyout price is lower than the REC traded price, that will spell doom for the existing REC market and its investments.
  5. Given that CERC is not mentioned in the EC Act at all, it would be more appropriate if the SERCs, through consensus decide on the uniform buyout price or else it could also be suggested by BEE to SERCs. SERCs can validate the above conditionalities as part of the compliance checking process and then announce the buyout price. SERCs have discretion to levy it upto 2X the prescribed mtoe price under EC Act. This is also as per EC Act where SERCs are required to 'adjudicate' (meaning assess the nature of violation and levy penalty accordingly) based on rules set by MoP.
  6. All requisite data as per formats specified by BEE in the rules/guidelines is submitted by DCs within the stipulated timeline.
- b) For those obligated entities which cannot reliably demonstrate adequate signed RE PPAs (at the time of RCO compliance checking/auditing), the penalty should be much higher than the buy-out price, say 2X the buyout price. Since the buy-out price is lower form of penalty for a limited time period, a higher non-compliance penalty should be levied for RCO compliance of FY 26-27 and onwards. DISCOMs could also consider requesting NTPC or SECI or any other central RE

implementing agency (REIA) to procure adequate RE on their behalf if they are unable to do the necessary tendering/bidding process on their own.

Further, if RECs are not fully exhausted, the penalty quantum determined by the state commissions (on per unit basis) should not be less than the annual weighted average of RECs prices discovered in power exchanges for the financial year for which the compliance is being verified.

Finally, 6 (ii.) Purchase of Renewable Energy Certificates (RECs) issued in accordance with regulations notified by the Central Electricity Regulatory Commission (CERC) should be slightly amended to

*“6 (ii.) ~~Purchase of~~ Renewable Energy Certificates (RECs) issued in accordance with regulations notified by the Central Electricity Regulatory Commission (CERC).”*

This would acknowledge the retaining of RECs by generators and not be limited to purchase.

## 2. Exemption for waste heat recovery for CPP

The draft notification, in clause 7, suggests that:

*“For captive users specified as designated consumers, Renewable Consumption Obligation shall include electricity generated and self-consumed, excluding auxiliary consumption. The obligation shall exclude electricity generated and self-consumed from waste heat recovery process using fossil-based sources, except for electricity generated from a Waste Heat Recovery Steam Generator (WHRS) in a captive Combined Cycle Gas-Based Generating Station. The obligations shall also exclude electricity generated and self-consumed through waste energy recovery - including from by-product gases, or other forms of residual energy sources associated with industrial processes. Further, the obligation shall exclude 50% (fifty percent) of the electricity generated and self-consumed from a fossil-fuel based co-generation plant.”*

Energy conservation Act 2001 empowers central government to specify minimum share of consumption of non-fossil sources by designated consumers as energy or feedstock under Section 14(x). The amendment is considering exempting electricity consumption from Waste Heat Recovery (except from HRSG in combined cycle CPPs) and 50% exemption from fossil-fuel based co-generation from RCO targets. This has created differentiation in process-based heat recovery and steam-based heat recovery and applicability of this exemption to various sectors and various technology combinations in various sectors like fertilizers, iron & steel, cement etc., with each sector arguing for exemptions and exceptions. Such energy efficiency measures like waste heat recovery are already being captured under PAT scheme as a measure of energy conservation. Further, the APTEL in its recent judgements (based on the EA, 2003 and state regulations) have made it very clear that fossil fuel based co-generation and WHR are not exempt from RPO targets.

Another important aspect is exempting auxiliary consumption. A blanket exemption for it, without any upper limit should be avoided and some ceiling for auxiliary consumption (different ceiling for different power generation processes) should be considered.

In our view, the definition of consumption, esp. for CPP should be as simple as possible with no exemptions. Further, if at all any exemption must be given, there should be either a clear sunset clause (e.g., ending by FY 2028 or FY 2029) or phase-out clause (e.g., 50% till FY 27, 25% during FY 28 & 29 and 0% for FY30 and beyond).

### 3. Aggregated Compliance

The draft notification allows aggregated compliance for multiple DCs through clause 10, which is as follows:

*“The Renewable Consumption Obligation compliance for multiple designated consumers under common control, as defined in the Companies Act, 2013, may be considered on an aggregate basis at the Holding Company level.”*

In this regard, the definition of holding company holds importance. Section 2(46) in The Companies Act, 2013 defines it as follows:

*“holding company”, in relation to one or more other companies, means a company of which such companies are subsidiary companies;*

The proposal for allowing RCO compliance at the Holding Company level across sectors (like cement, steel, DISCOMs etc.) is innovative and could probably not reduce transaction costs for DCs much. Instead, this could create quite a few operational complexities which need to be addressed by BEE/MoP.

- i. Most States have allowed cumulative RPO compliance for past year shortfalls which need to be complied with in FY 25 or even up to FY 26 or FY 27. Thus, excess or surplus in terms of RCO compliance in one particular year may have to be first used to sure up past RPO shortfalls.
- ii. Some states have specific penalties and incentives for shortfalls and surplus in RPO compliance (like MERC). What would happen to such past shortfalls and surplus and their associated penalties and incentives if compliance is assessed across state boundaries.
- iii. Further, up to FY 24 (for which most SERCs have not yet notified RPO compliance), the RPO framework under the EA, 2003 is operational while from FY 25 onwards we have the new RCO targets under the EC Act. How would RPO shortages/surpluses from FY 24 or earlier under the EA, 2003 be assessed and handled under the RCO targets for say FY 25 or FY 26 with very different penalty structures.
- iv. There is no clarity on whether aggregate compliance will be provided cross-sectoral or within a sector defined under EC Act 2001. Cross-sectoral aggregation in compliance will result into further complexities and undue advantage to a set of DCs. Suppose a holding company owns steel manufacturer and DISCOM. The DISCOM has to comply RCO targets under 4 categories (Wind, Hydro, Other RE and DRE), but steel company has to fulfill only total RCO targets. Aggregating such compliances will be very complex in determining actual compliances. Moreover, DISCOM/ OA consumer has more flexibility in power procurement strategy as compared to a captive consumer. Further, in case of non-compliance, how the penalty will be distributed or allocated amongst DCs?
- v. Finally for Corporate Compliance across states, which ERC would be the appropriate ERC for adjudicating compliance proceeding? Will it have to be the CERC and if so, would some legal amendments in EC Act be needed to operationalise this? If it is not CERC, then states will have to agree to a framework of accounting shortages and surpluses across DCs and on penalties. Further even if the penal amount is agreed upon, the critical question of where this money

should be kept and for what purpose should it be used is likely to create legal and other complexities, esp. if multiple state jurisdictions are involved.

Hence, we should proceed with caution and not unless the practical details for operationalization of such a scheme are worked out and agreed by all States. It should further be noted that under PAT scheme, each unit (not even at subsidiary level) has to submit data and ensure compliance of PAT targets. So, DC level compliance can be easily done in case of RCO framework as well.

In addition to this, there is an added complexity in case of power procurement for Distribution licensees. In some states, there is a centralized power procurement (single-buyer model) in states (like Gujarat, MP, Rajasthan, UP, Karnataka, Odisha, etc.) by another government-owned company (e.g., GUVNL, UPPCL, PCKL, GRIDCO, etc.) which then distributes power to DISCOMs based on their power demand/ requirement. As a result of this, there is no direct control of DISCOMs on their power procurement and also there is no bifurcation of how much power was procured from which plant (or source). At present, these DISCOMs submit combined RPO compliance through such power procurement company. An interesting case is that of Odisha wherein, there are 4 private-owned DISCOMs but their whole power procurement is done by GRIDCO (state government owned). Now, if there is any non-compliance in RPO/ RCO, which entity shall be held accountable for non-compliance? We request the Ministry to consider these complexities and include required clarification/ provisions in the notification. In our view, to ensure compliance is done at DISCOM level, the revised notification can include something similar to the what is stated below:

In case of single-buyer model, the holding companies should certify the power procurement of each DISCOM, which should be submitted by each DISCOM to BEE at the time final submission of data.

Finally, as any additional procurement by holding company is done based on demands of DISCOMs, the liability of RCO compliance lies with DISCOMs, not holding companies.

## 4. Clarity on penalty fund creation and management

The penalty should be maintained in separate national fund, which will ensure better monitoring, accounting and transparency of funds and its utilization. Further, while SERCs are empowered to adjudicate RCO non-compliance, the Act is silent on where such non-compliance penalties would be deposited (in a State or Central Fund?), who will manage these funds and how these funds should be utilised. The draft notification is also silent on this aspect. This aspect needs to be clarified either through an amendment to the EC Act or through the amended notification to avoid further legal and other complications between the Centre and the States.

## 5. Some provisions need further clarity

### a) Generation data for Distributed renewable energy installations

The draft notification provides that

*“Provided further that in case the designated consumer is unable to provide generation data against Distributed renewable energy installations, the reported capacity shall be converted into Distributed renewable energy generation in terms of energy by a multiplier of 4 kilowatt hour per kilowatt per day (kWh/kW/day).”*

The multiplier has increased from 3.5 kwh/kW/day to 4 kwh/kW/day in this draft. While we understand the challenge in estimating the generation from such DRE projects, there is a need to certify the capacity which is operational throughout the year for consideration under DRE category. Additionally, there can be some capacity which is operational only for a limited number of days, in which case, the obligated DC should give an undertaking mentioning operational days for such projects.

#### b) Meeting shortfall in DRE

The draft notification provides provision for use of surplus from the DRE category, however is silent on any other possibility to meet shortfall in the DRE category. Would RECs be allowed to meet DRE shortfall? Using REC for meeting shortfall in this category will defeat the purpose of not allowing any fungibility from other categories with DRE. Apart from this, there is no clear indication on whether such RECs were issued for RE projects with smaller capacity (up to 10 MW). **Hence, the notification should clarify that any shortfall in DRE will lead to RCO non-compliance for DISCOMs and that RECs are not a valid mechanism for meeting DRE targets.**

#### c) Compliance reporting by BEE to SERCs and state designated agencies

While the notification provides suo-motu power to the SERC's adjudicating officer, there is no provision for regular data reporting by BEE to either SERCs or state designated agencies. We suggest that the clause 11 be modified accordingly to provide such provision.

#### d) Timeline to consider shortfall in RCO compliance

While the clause 12 mentions that initial RCO compliance can be reported by 31<sup>st</sup> July and RCO compliance (incl. buyout price) can be reported by 31<sup>st</sup> Oct, there is no clarity when the non-compliance will be determined in clause 13. We suggest that the clause 13 be modified such that based on data reporting till 31<sup>st</sup> Oct, the RCO compliance will be determined by BEE and only then will any shortfall will be considered as non-compliance.

#### e) Inclusion of solar based projects under Other RE category

The draft does not explicitly mention solar based projects being included under other RE category. For better clarity, the same can be mentioned in note 5 of clause 2.

#### f) RCO for Deemed licensees

The notification should clarify that in case a deemed licensee is buying all of its power from DISCOMs, then the RCO for such deemed licensee should be fulfilled by that DISCOM, instead of deemed licensee.

#### g) Treatment of Green Tariff

There is a lack of clarity on how consumption under Green Tariff category be considered, especially if the consumer is an obligated DC. As the DC is paying premium for availing green tariff, such consumption shall be considered as RE procurement by DC, instead of DISCOM. The notification should clarify this and mandate DISCOMs to issue required certification.

## 6. Aspects to be covered under detailed guidelines

We would like to list out some aspects that need to be covered in the detailed guidelines to be issued by BEE, which are as follows:

- Timeline for compliance process

- Public process for Compliance verification and penalty imposition
- Public reporting of compliance data by DCs and penalty imposed on them
- Public reporting of penalty fund and its utilization
- Public reporting of status of non-compliance proceeding on DCs in each state for each year (along with name of DCs for which such proceeding is taking place and details of such proceedings like petition no, petition filing date, order date, etc.)

## 7. Draft bringing clarity on various aspects

The current draft brings clarity on various aspects related to RCO, which include net consumption for different DCs, data reporting timelines, treatment of surplus under DRE category, treating generation under apart from giving power to Adjudicating officers to initiate suo-motu proceeding for non-compliance.