



## Regulatory compliance with state government directives: The case of renewable energy policy in Rajasthan

June, 2020

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In a March 2020 suo-motu order,<sup>3</sup> the Rajasthan Electricity Regulatory Commission (RERC) has stipulated that costs arising out of implementing the state government's renewable energy (RE) policies (regarding banking and concessions on transmission and wheeling charges) will not be passed onto consumers and need to be subsidised by the state government. Typically, unlike RERC's treatment in this case, costs due to policy concessions are socialised or cross-subsidised by other users of the grid.<sup>4</sup> To that effect, these concessions have been treated more as rebates than subsidies. This article focuses on the implication of the directives issued by the Commission to implement state government policy.

### 1. Policy provisions and the regulatory treatment

The Government of Rajasthan announced revised solar and wind energy policies in December 2019 and subsequently issued directives under Section 108(1) of the Electricity Act, 2003 to RERC to implement its provisions. On the 5<sup>th</sup> of March 2020, RERC issued a suo-motu order providing regulatory directions in this regard. The policy provisions and RERC's directions to utilities are summarised in Table 1.

Table 1: RERC directions with respect to state government policy provisions

Issue	Policy Directive	RERC order
Banking	<ul style="list-style-type: none"><li>– Banking for captive and open access on annual basis (April to March). Currently, banking is only allowed for captive, that too on a monthly basis.</li><li>– Banking charge: 10% of banked energy. Currently it is 2%.</li></ul>	Financial impact due to provisions cannot be passed on to consumers. Electricity distribution companies (DISCOMs) and transmission companies directed to approach state governments for subsidy support.
Transmission and Wheeling charges	<p>Open access/captive plants upto 25 MW commissioned after enactment of policy till FY23:</p> <ul style="list-style-type: none"><li>– 50% concession on transmission, wheeling charge for first 7 years.</li><li>– 75% concession if project is with storage and for repowered wind systems.</li><li>– 100% exemption if plant is for electric vehicle charging stations for first 10 years.</li></ul>	
Storage with renewable energy	<p>Purchase obligation (in MW) for upto 5% of overall renewable purchase obligation (RPO) target. Minimum rated capacity to be 50% of project capacity.</p>	Implement policy provision. Solar/ wind capacity bidding can specify storage requirement on pilot basis.
Rooftop solar	<ul style="list-style-type: none"><li>– Allowed for upto 50% of distribution transformer (DT) capacity that the consumer is connected to (RERC net metering regulations stipulate 30% of DT capacity).</li><li>– Net metering with banking for domestic consumers as well as for government agencies/ buildings.</li><li>– Gross metering allowed for systems upto 1 MW.</li></ul>	DISCOMs to adhere to 50% DT limit and file petition to amend net metering regulations to allow government agencies to avail net metering. DISCOM to assess need of gross metering, sign PPAs and file tariff petitions. State government to issue guidelines to implement directives.

Source: Summarised by authors from RERC Order in Case No: S.M.O/20/01 dated 5th March 2020

RERC has also directed DISCOMs to conduct impact assessment studies of policy provisions and to report the status of recovery of subsidies in one year.

While RERC has not stopped utilities from implementing policy provisions, it requires state government to take financial responsibility for any cost implications. In the wake of the [proposed Electricity Act amendments](#) and discussions around mandatory provisions in central sector policies, it is pertinent to note that state governments also find it challenging to implement their policies via state-level institutions like the regulatory commissions.

At the time of writing this article, it is not clear if the Government of Rajasthan has issued further directions under Section 108 (2) or if the utilities have appealed against the RERC order. It is also not clear if the utilities are abiding by RERC directions and seeking subsidy support from the state government for the same.

Broad observations on some of these directions are discussed below.

## 2. Treatment of concessions

Given the increasing cost-competitiveness of renewable energy, many states which earlier had provided concessions have either discontinued it or are proposing to do so.<sup>5</sup> Concessions for future projects would increase the financial burden on the state exchequer or other users of the grid, and at present may not be necessary. RERC's position on the policy directives should be seen in this context.

The decision to provide subsidy rests squarely with the state government. If the state government does not commit to subsidy and insists on implementation of its policy, the cash-strapped utilities would have to bear the financial burden. This has been observed in Uttar Pradesh, where the Commission disallowed revenue from cross-subsidy from being used to support tariffs of domestic and agricultural consumers and directed the DISCOMs to obtain 'additional subsidy' from the state government to meet cross-subsidy requirement. The state government did not commit to paying this 'additional subsidy' which (with carrying costs) contributed to about Rs. 50,000 crores of DISCOM losses by FY18.<sup>6</sup>

## 3. Need for impact assessment for all major schemes and policy provisions

While impact assessment of the policy provisions would lead to better accountability, it is equally vital that there is increased regulatory scrutiny of other policy measures and schemes in the state sector. In addition to RE policy provisions it is vital that an impact review should also take place for:

- state-level implementation of central government sponsored schemes such as [IPDS](#) and [DDUGJY](#)
- state government backed debt restructuring schemes like [FRP](#) and [UDAY](#)
- state government schemes such as [MMSLVY](#), Feeder Renovation Programme<sup>7</sup>
- investment in capacity addition for new projects by state generating company, RVUNL.

## 4. Compliance with Section 108

The crux of the issue in this matter is whether RERC is legally mandated to comply with state government directions under Section 108 of the Electricity Act which states that:

- (1) In the discharge of its functions, the State Commission shall be guided by such directions in matters of policy involving public interest as the State Government may give to it in writing.*
- (2) If any question arises as to whether any such direction relates to a matter of policy involving public interest, the decision of the State Government thereon shall be final.*

RERC maintains that the current directions are guiding and has cited judgments by the Appellate Tribunal for Electricity (APTEL) to uphold this position.

These are detailed below:

- **Judgement** in Appeal No. 207 of 2013 dated 19<sup>th</sup> September 2014: The Punjab Electricity Regulatory Commission (PSERC) rejected the petition of an RE generator (co-gen project) seeking tariff revision in line with PSERC revised feed-in tariffs. PSERC maintained that revision over and above PPA terms was specified for captive and merchant RE projects and not co-gen projects in Punjab's New and Renewable Sources of Energy (NRSE) Policy of 2012. The generator appealed and APTEL decided that PSERC could not reject the plea solely based on NRSE Policy, 2012. APTEL observed that:

*'...any direction of the State Government, issued under section 108 of the Electricity Act, 2003, which hampers with discharge of statutory functions of the State Commission, is also not binding upon the State Commission.'*

- **Judgement** in Appeal No. 109 of 2013 dated 21<sup>st</sup> January 2014: The Tamil Nadu Solar Energy Policy, 2012 stated that all HT and LT commercial consumers of the state DISCOM, TANGEDCO are to procure RE power equivalent to 6% of their consumption from solar to meet a solar purchase obligation (SPO) specified in the policy. This SPO is over and above renewable purchase obligation (RPO) applicable on TANGEDCO as well as open access and captive consumers in the state. To ensure implementation, the state government issued directions under Section 108 (2) in public interest.<sup>8</sup>

The Commission in its order directed consumers to comply with the SPO and industrial consumers appealed against the order. APTEL highlighted that the Commission's direction is selective and in contradiction with its regulations and set aside the order observing that:

*'The State Commission has simply tried to implement the directions of the State Government by passing the impugned order without considering its own functions and powers under the 2003 Act and its own Renewable Energy Regulations notified under the Act and even without considering the other important issues raised by the objectors.'*

As TANGEDCO has moved the Supreme Court against the APTEL judgement, the matter is currently sub-judice.

There seems to be lack of clarity on whether directions under Section 108, including those issued in public interest, are to be entirely followed by the Commission or if the Commission is to use discretionary powers to decide on these matters. Lack of clarity makes it challenging for the state government to implement its policies. In many cases, with the difference of opinion between the state government and the commission on policy matters, it is the DISCOMs that are impacted.

Going forward, one hopes that more clarity comes with more such matters being decided by the apex court. Further, it is also desirable that state government policy is decided after significant deliberations and that the commitment is shared by the state regulatory commission for smooth implementation.

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<sup>1</sup> The authors thank Shantanu Dixit, Manabika Mandal, and Sreekumar N for their keen observations and insights.

<sup>2</sup> This article is part of an ongoing series called Power Perspectives which provides brief commentaries and analyses of important developments in the Indian power sector, in various states and at the national level. The portal with all the articles can be accessed here: <https://prayaspune.org/peg/resources/power-perspective-portal.html>. Comments and suggestions on the series are welcome, and can be addressed to [powerperspectives@prayaspune.org](mailto:powerperspectives@prayaspune.org).

<sup>3</sup> Suo-Motu order, dated 5<sup>th</sup> March, 2020 in Case No: S.M.O/20/01 is available [here](#).

<sup>4</sup> For example, this is the case with the [waiver](#) of Power Grid Corporation of India (PGCIL, the central transmission utility) charges and losses for inter-state transmission wind and solar as well as the [waiver](#) provided for wheeling and intra-transmission charges for renewable energy projects in [Punjab](#) and the waiver on cross-subsidy surcharge for [solar](#) and [wind](#) projects availing open access in Gujarat.

<sup>5</sup> The Government of Andhra Pradesh has discontinued exemptions on transmission, wheeling and cross subsidy surcharge provided in 2015 in the [2018 solar policy](#). The Tamil Nadu Commission in its discussion papers on [wind](#) and [solar](#) recently proposed removal of specific concessions in the state.

<sup>6</sup> For more details, please read [the Uttar Pradesh Overview](#) under Power Perspectives.

<sup>7</sup> For more details, please see page 29 of CAG report available [here](#).

<sup>8</sup> Letter by Government of Tamil Nadu to the Commission dated 6<sup>th</sup> November 2012 stated that: 'In order to achieve energy security as well as reduce carbon emissions, in public interest, (emphasis added) Tamil Nadu Government has released Tamil Nadu Solar Energy Policy 2012 as per GO(Ms.) No. 121 dated 19.10.2012. [...] I am therefore directed to state that as a policy directive Tamil Nadu Policy 2012 is enclosed herewith for necessary action, under Section 108 of the Electricity Act, 2003.'

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