



Delhi Electricity Regulatory Commission
Viniyamak Bhawan, 'C' Block, Shivalik, Malviya Nagar, New Delhi -110017

No. F. 11(1226)/DERC/2015-16/4798/

Petition No. 30/2015

In the matter of: Petition under Section 86(1)(e) of the EA 2003, DERC (Renewable Purchase Obligation and Renewable Energy certificate Framework Implementation) Regulations, 2012

BSES Rajdhani Power Limited

Through its: CEO

BSES Bhawan, Nehru Place,
New Delhi-110019

...Petitioner

National Solar Energy Federation of India
702 Chiranjiv Tower,43, Nehru Place,
New Delhi 110 019

And

Green Energy Association
Sargam, 143, Taqdir Terrace,
Near Shirodkar High School
Dr. E. Borjes Road,
Parel (E) Mumbai 400012

... Intervenors

And

Petition No. 31 of 2015

In the matter of: Petition under Section 86(1)(e) of the EA 2003, DERC (Renewable Purchase Obligation and Renewable Energy certificate Framework Implementation) Regulations, 2012

BSES Yamuna Power Ltd.

Through its: CEO

Shakti Kiran Building,
Karkardooma
New Delhi - 110092

....Petitioner

National Solar Energy Federation of India
702 Chiranjiv Tower,43, Nehru Place,
New Delhi 110 019

And

Green Energy Association
Sargam, 143, Taqdir Terrace,
Near Shirodkar High School
Dr. E. Borjes Road,
Parel (E) Mumbai 400012

... Intervenors

And

PETITION NO. 01/2018

In the matter of : Petition u/s 86(1)(e) of the Electricity Act, 2003; and DERC (Renewable Purchase Obligation and Renewable Energy Certificate Framework Implementation) Regulations, 2012 in regard to Renewable Purchase Obligation for the year 2016-17.

BSES Yamuna Power Limited

Through its : CEO

Shakti Kiran Building,

Karkardooma

New Delhi – 110 092

.....Petitioner

Coram: Sh. B.P. Singh, Member

Appearance:

1. Mr. Buddy A Ranganadhan, Adv., BYPL & BRPL
2. Ms. Malvika Prasad, Adv., BYPL & BRPL
3. Mr. Hasan Murtaza, Adv., BYPL & BRPL
4. Mr. G. B. Swain, BYPL
5. Mr. Abhishek Srivastava, BYPL
6. Ms. Sashi Goyal, BRPL
7. Mr. Ravi Shandilya, BRPL
8. Mr. Sameer Singh, BYPL
9. Mr. Brajesh Kumar, BYPL
10. Mr. Shekhar Saklani, BYPL
11. Ms. Prachi Jain , BYPL
12. Mr. T.C. Sharma, Interveners

ORDER

(Date of Hearing: 22.05.2018)

(Date of Order: 11.06.2018)

1. The following petitions have been filed by the petitioners for waiver and deferment of compliance of Renewable Power Obligation (RPO) as described below:
 - a) Petition No. 30/2015 and 31/2015 filed by BRPL and BYPL respectively for waive the solar and non-solar RPO targets and defer compliance thereof for the years 2013-14, 2014-15 and 2015-16;
 - b) Petition No. 01/2018 filed by BYPL for waive the non-solar RPO for the year 2016-17 in the absence of an approved ARR.
2. The aforesaid matters were tagged with Petition No. 80 of 2015 filed my M/s Renewable Energy Association u/S 142 for imposing penalty on the DISCOMs for non compliance of RPO targets, as decision in these matters would have bearing over Petition No. 80/2015.

3. As the aforesaid three petitions regarding waiver of deferment of RPO are now being decided and the tagged matter 80/2015 is being de-tagged.
4. In compliance of the Commission's Order dated 27.03.2018, M/s Green Energy Association has filed its reply in Petitions No. 30 and 31 of 2015 wherein it is submitted that :
 - a) The only way to fulfill RPO for any year is to purchase REC or renewable power under Regulation 4 of the RPO Regulations, 2012. The said obligation can be carried forward to the next year only if RECs are not available. However, if the obligated entity fails at fulfilling its RPO even when RECs were available in the market, an amount calculated on the basis of forbearance price of the requisite RECs is required to be deposited as a compensation fund in terms of Regulation 11 of the RPO Regulations.
 - b) The solar power generators have invested in solar generating stations under the REC scheme. As a result, after commissioning the solar plants, the generators have sold electricity energy rates (being APPC), or to third party under Open Access at negotiated rates. While part of tariff was recovered at the time of sale, the recovery of renewable energy component of the energy was deferred so as to be recovered from the sale of REC at a price between forbearance and floor price determined by the CERC. In the event, the petitioners RPO non-compliance is condoned, it will result in an unfair denial of recovery of this renewable energy component/attribute which cannot be permitted.
 - c) The Discoms by filing these petitions are trying to escape from their RPOs. Any waiver or carry forward by the Hon'ble Commission would contribute towards the decimation of already failing REC market.
 - d) It is well established that carry forward/review of RPO under the RPO Regulations, 2012 can only be allowed in exceptional cases where non-availability of RECs is an essential requirement. However, no such non-availability of RECs existed in the present case.
 - e) The Hon'ble Commission in its Order dated 13.07.2015 in the present matter has noted that despite earmarked amount for purchase of REC in order to meet the RPO, the petitioner has failed to purchase the said RECs. Despite the directions in the Commissions Tariff Orders and abundant availability of RECs in the market, the petitioners have failed to comply with their RPOs through purchase of RECs.
 - f) The petitioners have erred in using the funds approved for purchase of RECs for other purposes. The petitioner cannot use the REC funds as per its whims and fancies. The petitioners cannot misappropriate the funds in

such a manner in violation of the RPO Regulations, 2012, provisions of the Act and the orders of the Commission as well as APTEL.

- g) The meagre penalty of 10% of cumulative RPO compliance imposed on the petitioner cannot absolve the petitioner from fully complying with the outstanding RPOs as envisaged under the RPO Regulations.
 - h) In fact, the meagre penalty imposed on the petitioners for non-compliance of RPO Regulations in terms of Order dated 31.08.2017 of this Commission is clearly in addition to the full RPO compliance by the petitioners. The said penalty cannot be said to have decided the issue of non-compliance raised vide petition no. 19 of 2014 by the Respondent as well as the present petition.
 - i) Without prejudice to the above, it is submitted that in terms of Regulation 11, the RPO fund directed to be created by this Commission has to be used for purchase of RECs so as to ensure compliance of the RPO Regulations by the Obligated Entities.
 - j) In terms of Regulation 11 the amount to be deposited in the fund by the obligated entity is calculated on the basis of forbearance price. The said fund is to be used for purchase of certificated. However, the Regulations provide that in case of genuine difficulty in complying with the RPO because of non-availability of renewable energy and/or certificates, the obligated entity can approach the commission to carry forward the compliance requirement to the next year.
 - k) Therefore, in view of the above submissions the Hon'ble Commission may forthwith direct the petitioner to fully comply with its cumulative outstanding RPOs as envisaged under the RPO Regulations, previous orders of this Commission, Judgments of the APTEL and provisions of the Act.
5. Before going into the merits of the case, it is to be pointed out that it is incumbent upon the Commission u/s 86(i)(e) to promote cogeneration and generation of electricity from renewable sources of energy by providing suitable measures for connectively 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 distribution licensee.
6. The above position has been reiterated by Hon'ble Supreme Court and Honb'le Appellate Tribunal for Electricity in certain judgments. The Hon'ble Supreme Court in Hindustan Zinc Ltd. vs Rajasthan Electricity Regulatory Commission has observed that Article 51A (g) of the Constitution of India cast a fundamental duty on the citizen to protect and improve the natural environment. The object

being reduction of pollution by promoting renewable source of energy, larger public interest must prevail over the interest of the industry.

7. Further the Hon'ble Appellate Tribunal for Electricity in OP No. 1, 2 and 4 of 2013 has given directions to all State Electricity Commissions that:

(i) *The provisions in Regulations like power to relax and power to remove difficulty should be exercised judiciously under the exceptional circumstances, as per law and should not be used routinely to defeat the object and purpose of the Regulations.*

8. Regulation 11 (1) of Delhi Electricity Regulatory Commission (Renewable Purchase Obligation and Renewable Energy Certificate Framework Implementation) Regulations, 2012, stipulate that:

11. Effect of default

(2) *Where any obligated entity fails to comply with the obligation to purchase the required minimum quantum of purchase from renewable Energy Sources or the Renewable Energy Certificate(s), it shall also be liable for penalty, as may be decided by the Commission, under Section 142 of the Act;*

Provided that in case of genuine difficulty in complying with the renewable purchase obligation because of non-availability of Certificate(s), the obligated entity may approach the Commission for carry forward of compliance requirement to the next year. However, credit for excess renewable energy purchase would not be adjusted in the next year.

9. It is since 2012 when the RPO Regulations were notified by the Commission. The petitioners are in default and have failed to fulfill the RPO obligation even till date despite the fact that necessary finance has been provided in the ARR of the Petitioners of respective years to meet the RPO obligations through purchase of REC. Moreover, there was no 'non-availability' of certificates to meet the RPO in respective years as such to attract relaxation under the provision to Regulation 11 of the DERC (Renewable Purchase Obligation and Renewable Energy Certificate Framework Implementation) Regulations, 2012.

10. The contention of the Petitioner that the RPO Targets are not specified before the commencing of the year is unfounded because RPO targets have been well defined in terms of percentage for the respective years in the RPO Regulations. The Petitioners had knowledge about their RPO targets even in the year 2012 and therefore, this plea cannot be accepted. Regarding the actual purchase in terms of unit the Commission provides extra 3 months to calculate the exact

figure to meet the RPO Obligation and it can be done only at the end of the financial year and not in the beginning.

11. Similarly, the contention of the Petitioner that the financial inadequacy has forced them in a position that they could not comply with the RPO targets is again a non acceptable plea because the Petitioners have to manage finance through equity and loan not only for RPO targets but also for other activities of their distribution business. The Commission is allowing carrying cost towards regulatory assets. Failure to manage finance cannot be a reason for deferment of RPO targets.
12. In view of the above it is seen that the petitioners have not put forward any plausible and acceptable arguments on plea to support/their prayer for deferment/modification of RPO and thus no relief can be granted to the petitioner's and the petitions are dismissed.
13. Ordered accordingly.

Sd/-
(B.P. Singh)
Member