

**Before the**  
**MAHARASHTRA ELECTRICITY REGULATORY COMMISSION**  
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**CASE No. 65 of 2020**

Case of Oil and Natural Gas Corporation Limited for exemption /clarification of Renewable Purchase Obligation in light of the latest communication issued by the Government of India, Ministry of Power dated 1 February 2019.

M/s Oil and Natural Gas Corporation Limited. ....Petitioner

V/s

Maharashtra Energy Development Agency ....Respondent

Appearance

For the Petitioner :Shri.Girish Paryani (Adv.)  
For the Respondent :Shri. Dr. J.V Torane (Rep.)

**Coram**

**I.M. Bohari, Member**  
**Mukesh Khullar, Member**

**ORDER**

**Date: 1 September 2020**

1. M/s Oil and Natural Gas Corporation Limited (**ONGC**) has filed this Case dated 3 March, 2020 for exemption /clarification of Renewable Purchase Obligation (**RPO**) in light of the latest communication issued by the Government of India, Ministry of Power, No. 30/04/18-R&R Dated 1 February 2019
2. **Main Prayers of ONGC are as follows:**
  - a. *The commission be pleased to clarify that the petitioner has no RPO Obligation or RPO Targets to be met in the light of the Communication No. 30/04/18-R&R dated 01/02/2019.*

*Alternatively:*

- b. The petitioner be allowed to discharge the RPO obligation, in the event the petitioner is held liable to meet the RPO targets as per the said notification, 2016 and clarification order, 2019 after clarifying the percentage on which the RPO of the CPP is required to be pegged.*
- c. Pending the hearing and final disposal of the present proceedings the commission be pleased to direct that no coercive action be taken against the petitioner for shortfall in the RPO Target as per the said notification.*

**3. ONGC in its Petition has stated as under:**

- 3.1 ONGC has set-up 3 Gas Turbines, two were set-up in 1984 and another was installed in the year 2000. The Co-Generation plant at ONGC-Uran meets the power and steam demand of the process complex through 3 Gas Turbines and 3 associated Heat Recovery Steam Generators (**HRSGs**) with one Gas Fired Boiler. The total installed capacity of power is 59.2 MW whereas installed capacity of Steam is 330 Tph.
- 3.2 The RPO Regulation originally promulgated vide notification in the year 2010 initially exempted Co-generation Power Plant (**CPP**). By the RPO Regulations, 2016 the initial exemption granted to the Co-generation Plant was withdrawn and expanded to cover all CPP users. ONGC falls within the definition of 'Captive User' as envisaged in 2(b) of the Regulations and accordingly falls within 'Obligated Entities' category.
- 3.3 The said Regulations makes it mandatory for every captive user to compulsorily consume/utilize a certain percentage of their energy requirements from Renewable Energy resources aiming to incentivize and promote Renewable Energy Generation. The RPO is to be complied through purchase of a specific percentage of RE in the form of Solar and Non-Solar from RE generators or purchase of equivalent number of Renewable Energy Certificates (**REC**) traded at Power Exchanges in India.
- 3.4 As per the guidelines of the Commission, ONCG-Uran is purchasing REC to comply the RPO since FY 2016-17. Accordingly, since then RPO compliances were done and reported to Maharashtra Energy Development Agency (**MEDA**) though with certain shortfall.
  - 3.4.1 The Under Secretary to the Govt. of India, Ministry of Power vide letter No. 30/04/2018-2019 dated 1 February, 2019 issued one clarification with reference of Orders dated 22 July, 2016 and 14 June, 2018 wherein long term trajectory of RPO for Solar and Non-Solar for the period of 2016-19 and 2019-22 was mentioned. It was clarified that 'RPO of the CPP may be pegged at the RPO level applicable in the year in which the CPP was commissioned'.
  - 3.4.2 The Co-generation plants of ONGC have been setup way before the RPO Regulations came into effect. It is not clear whether RPO mentioned in the RPO Regulations, 2016 is

applicable to the ONGC or even if the same is ruled out to be mandatory on ONGC, it is to be pegged at the RPO level applicable in the year in which the CPP was commissioned.

3.5 Though ONGC is complying with the Regulations as on date but ONGC is required to get clarification on the said as the commissioning of ONGC's CPP was before the year 2016 and the subsequent clarification has only added confusion in the light of commissioning of CPP of ONGC before RPO Regulations 2016. Hence ONGC has approached the Commission seeking declaration/clarification whether it is exempted from responsibility of pegging RPO, if not, then ONGC seeks clarification as to quantum/percentage on which such RPO of the CPP is to be pegged.

4. **MEDA in its reply dated 23 April 2020 has stated that:**

4.1 In Ministry of Power has mentioned following clarification in its dated 1 February 2019.

*“The request of various stakeholders regarding capping of RPO for Captive Power Plants (CPP) has been examined in consultation with Ministry of New and Renewable Energy and it is clarified that RPO of the CPP may be pegged at the RPO level applicable in the year in which the CPP was commissioned. As and when the company adds to the capacity of the CPP, it will have to provide for additional RPO as obligated in the year in which new capacity is commissioned. There should not be an increase in RPO of CPP without any additional fossil fuel capacity being added.”*

The Commission has already clarified through RPO Regulations, 2019 in Regulation No.7.5 about the applicability of RPO to the CPP with respect to their commissioning date.

4.2 As per the RPO Regulations 2019, ONGC's RPO target should be pegged at 9% because the commissioning date for 2 Gas Turbines is 1984 and 1 Gas Turbine's commissioning date is 2000.

4.3 ONGC's Gas based Co-generation units should follow RPO Regulations, 2016 for control period FY 2016-17 to FY 2019-20 and RPO Regulations, 2019 for further period for fulfilment of RPO.

5. At the e-hearing through video conferencing held on 11 August 2020, the Advocate of ONGC reiterated its submissions in the Petition and further stated that its prayer regarding the CPP cannot be fastened with any RPO as it is mandated as per RPO Regulations 2016 is similar to issue pleaded today by JSW Steel Limited in Case No 335 of 2019 and the dispensation to be considered by the Commission in Case No 335 of 2019 will be acceptable to ONGC. The representative of MEDA reiterated its submissions in the reply.

**Commission's Analysis and Ruling:**

6. The Commission notes that ONGC through the instant Case has mainly sought clarification for applicability of RPO targets for its CPPs, mandated as per RPO Regulations 2016, in view of the clarification issued by MoP vide its Notification dated 1 February 2019. In the said notification, MoP has clarified that that RPO of the CPP may be pegged at the RPO

level applicable in the year in which the CPP was commissioned. The clarification issued by MoP is reproduced as under:

*“The request of various stakeholders regarding capping of RPO for Captive Power Plants (CPP) has been examined in consultation with Ministry of New and Renewable Energy and it is clarified that RPO of the CPP may be pegged at the RPO level applicable in the year in which the CPP was commissioned. As and when the company adds to the capacity of the CPP, it will have to provide for additional RPO as obligated in the year in which new capacity is commissioned. There should not be an increase in RPO of CPP without any additional fossil fuel capacity being added.”*

7. ONGC has stated that its CPPs were commissioned way back in the year 1984 and 2000 when the RPO Regulations were not even notified. Therefore, under such circumstances, ONGC is not clear whether RPO targets are applicable to it and if yes, then at what percentage of generation the RPO targets are to be met. ONGC further stated that as per mandate under RPO Regulations 2016, ONGC is fulfilling its RPO targets by purchasing RECs since FY 2016-17.
8. The Commission notes that after the above stated clarification issued by MoP in its notification dated 1 February 2019, MoP in its subsequent notification dated 1 October 2019, has further clarified this issue as under:

*“ i) For CPPs commissioned before 1.04.2016, RPO should be at the level as mandated by the appropriate Commission for the year 2015-16. For CPPs commissioned from 1.04.2016 onwards, the RPO level as mandated by the appropriate Commission or Ministry of Power, whichever is higher, for the year of commissioning of the CPP shall be applicable.*

*ii) In case of any augmentation in the capacity, the RPO for augmented capacity shall be the RPO applicable for the year in which the CPP has been augmented.*

*iii) In case, for meeting the RPO obligation, CPP has surplus power than its consumption requirements, such a CPP may sell its surplus power to the DISCOMs under the prevailing arrangements or in the power exchange.”*

9. As can be seen from subsequent clarification dated 1 October 2019, MoP has pegged the RPO targets for the energy generated from the CPP commissioned before 1 April 2016 to the RPO target applicable for FY 2015-16 and for subsequently commissioned CPP to the RPO target applicable for the year in which such CPP has been commissioned. Considering this clarification issued by MoP, the Commission in its RPO Regulations, 2019 has made following provision:

*Provided that in case of Captive User of a Captive Generating Plant commissioned before 1 April 2016, the composite RPO target with respect to the energy procured from such Captive Generating Plant shall be 9%;*

*Provided further that in case of Captive Generating Plant commissioned on or after 1 April 2016, the composite RPO target shall be equal to the target applicable for the year in which project is commissioned;*

10. Therefore, through RPO Regulations 2019, the Commission has clarified that CPP commissioned before 1 April 2016 have to comply with RPO target of 9%, which was applicable RPO percentage for FY 2015-16. ONGC's captive plants are commissioned before 1 April 2016 and hence this provision of Regulations is applicable to it. However, said provision is part of RPO Regulations 2019 which is applicable for FY 2020-21 to FY 2024-25. Hence, during this period ONGC needs to comply with RPO target of 9%.
11. Regarding applicability of such capping of RPO targets for the period of RPO Regulations, 2016, the Commission notes that such proviso of capping RPO to the target applicable for the year in which such CPP has been commissioned was not there in the RPO Regulations 2016. Further, the Commission note that Captive Power Producers Association, of which ONGC is also the Member, has already filed a detailed Petition in Case No. 130 of 2020 before this Commission specifically seeking such capping of RPO targets during the period of RPO Regulations 2016. Therefore, in the opinion of the Commission, it would be appropriate if the Commission decides this issue in Case No. 130 of 2020 which already has been scheduled for hearing.
12. The Commission would like to highlight that the validity of provisions under RPO Regulations, 2016 has been challenged before Hon'ble Bombay High Court. To protect interest of fossil fuel based co-generation plants, the Commission vide its Order dated 22 May 2019 in Case No. 68 of 2019 has held that till the Writ Petition is decided by the High Court, the captive users will have option of depositing the amount equivalent to REC Floor Price of the shortfall units and further on year to year basis to meet its RPO, with the MEDA. The relevant excerpts from the Order are as below:

“

*11. In the light of the above-mentioned facts including the provisions of the Regulations and that since no stay is granted by the High Court, the Commission is of the opinion that the Petitioner is bound to follow the prevailing Regulations. Since the Commission has allowed other obligated entities to meet its obligation by March 2020, the Commission is allowing similar concession to the fossil fuel based cogeneration plants to fulfill its cumulative RPO targets by March 2020.*

*12. Alternately, as highlighted in para 10 above, the Commission will be initiating the RPO Compliance verification process for FY 2014-15 to FY 2016-17 for CPP users and OA Consumers. After crystallization of the verification process is completed by the Commission, the shortfall (if any) will be ascertained, and the petitioner shall deposit the amount equivalent to the REC floor prices of the shortfall units and further on year to year basis to meet its RPO, with the MEDA till such time the writ petition is decided by the High Court. The Commission opines that this alternative option will address the concerns of the petitioner about the possible hardship in case it succeeds in the High Court.*”

ONGC can opt for the above option for protecting its interest and fulfilling RPO targets specified under the RPO Regulations.

13. As regards the ONGC's reliance on the matter of JSW Steel Limited in Case No 335 of 2019 and statement that relief granted in that matter be made applicable to it, the Commission notes that by its Order dated 29 August 2020, it has rejected relief sought by JSW Steel Limited in Case No 335 of 2019.
14. Hence, the following Order:

**ORDER**

1. **The Case No. 65 of 2020 is partly allowed.**
2. **Oil and Natural Gas Corporation Limited shall comply with RPO target of 9% as per MERC (Renewable Purchase Obligation, its Compliance and Implementation of Renewable Energy Certificates Framework) Regulations, 2019 for its period of applicability.**
3. **Issue of applicability of RPO targets under MERC (Renewable Purchase Obligation, its Compliance and Implementation of Renewable Energy Certificates Framework) Regulations, 2016 will be decided under Case No. 130 of 2020 filed by Captive Power Producers Association of which ONGC is the member.**

**Sd/-**  
**(Mukesh Khullar)**  
**Member**

**Sd/-**  
**(I. M. Bohari)**  
**Member**

  
**(Abhijit Deshpande)**  
**Secretary**

