

**BEFORE THE HARYANA ELECTRICITY REGULATORY COMMISSION
BAYS No. 33-36, SECTOR-4, PANCHKULA- 134112, HARYANA**

Case No. HERC/PRO – 11 of 2020

DATE OF HEARING : 24.09.2020

DATE OF ORDER : 28.09.2020

IN THE MATTER OF:

Petition under Regulation 66 of the Haryana Electricity Regulatory Commission (Terms and Conditions for Determination of Tariff from Renewable Energy Sources, Renewable Purchase Obligation and Renewable Energy Certificate) Regulations, 2017 for issuance of orders or directions towards netting of excess Wind Energy Consumption by the Petitioner at its Karnataka Cement Plant against its Non-Solar Renewable Purchase Obligation in the State of Haryana.

Petitioner

M/s. Shree Cement Limited

Respondents

1. New & Renewable Energy Department, Haryana & HAREDA (HAREDA)
2. Uttar Haryana Bijli Vitran Nigam Limited (UHBVNL)

Present On behalf of the Petitioner, through Video Conferencing

Shri Amarjeet Singh, Vice-President

Present On behalf of the Respondents, through Video Conferencing

Shri R.S. Poonia, Project Officer, HAREDA
Shri Vikash Kadian, XEN/HPPC

Quorum

Shri D.S. Dhesi,
Shri Pravindra Singh Chauhan,
Shri Naresh Sardana,

Chairman
Member
Member

ORDER

Brief Background of the case

1. The petitioner herein i.e. M/s. Shree Cement Limited (the petitioner) , has sought indulgence of the Commission under Regulation 66 of the Haryana Electricity Regulatory Commission (Terms and Conditions for Determination of Tariff from Renewable Energy Sources,

Renewable Purchase Obligation and Renewable Energy Certificate) Regulations, 2017 (hereinafter referred to as RE Regulations). The specific relief sought by the petitioner is as under:-

i) The Petition may be allowed and the Commission, by exercising its power under regulation 66 of HERC (Terms and Conditions for Determination of Tariff from Renewable Energy Sources, Renewable Purchase Obligation and Renewable Energy Certificate) Regulations, 2017, may issue orders or directions that would allow excess renewable energy consumption by the Petitioner at its Karnataka Cement Plant to offset its RPO against conventional open access energy consumed at its cement grinding unit situated in the state of Haryana.

ii) Pass any other order or direction which this Commission deems just and proper in the facts and circumstances.

2. The petitioner, in support of the relief sought, has submitted the following:-

- a) That the Petitioner, has its Cement Plant in Panipat district, Haryana. The said unit is an HT consumer (a/c no. 5038740000) of UHBVN. The production facility of the Petitioner has a contract demand of 8000 KVA and draws power at 33 KV pressure through an independent feeder from 132 KV/33 KV Matlauda sub-station of Respondent-2 (UHBVN).
- b) That the Petitioner is eligible to avail Open Access under Regulation (8) of HERC Terms and Conditions for Grant of Connectivity and Open Access for Intra-State Transmission and Distribution System) Regulations, 2012. The Petitioner meets part of its power requirement by purchasing power through Indian Energy Exchange (IEX) under open access.
- c) That the Petitioner being an Obligated Entity is required to meet Renewable Purchase Obligation (RPO) for the power that it purchases under open access as provided under Regulation 54 Haryana Electricity Regulatory Commission (Terms and Conditions for Determination of Tariff from Renewable Energy Sources, Renewable Purchase Obligation and Renewable Energy Certificate) Regulations, 2017 (herein after called as "RE Regulations"). The Regulation 54 of RE Regulation defines RPO requirement as under: -

"54 Renewable Purchase Obligation –

(1) Every Obligated Entity including distribution licensee, consumers owning captive power plant and open access consumers including short term open access consumers in Haryana, shall purchase energy from renewable energy sources under the Renewable Purchase Obligation (RPO) as under: -

FY	Existing Total RPO (%) of Consumption		Revised Minimum RPO (%) of Total Consumption Excluding Hydro	
	Total RPO	Solar	Non-Solar	Solar
2016-2017	3.75	1.00	2.75	1.00
2017-2018	4.00	1.25	2.75	2.50
2018-2019	4.50	1.50	3.00	4.00
2019-2020	4.75	2.00	3.00	5.50
2020-2021	5.00	2.50	3.00	7.00
2021-2022	5.50	3.00	3.00	8.00

(2) Provided that solar renewable purchase obligation specified above shall be procured from generation based on solar energy sources only. Provided further, such obligation to purchase renewable energy shall be inclusive of the purchases, if any, from renewable energy sources already being made by obligated entity concerned."

- d) That to meet the RPO compliance as per above Regulation, the Petitioner purchases both Solar and Non-Solar Renewable Energy Certificates (REC). Accordingly, the Petitioner purchased total of 30 Non-Solar RECs and 40 Solar RECs for meeting RPO compliance for the period 2018-19.
- e) That the Petitioner is also having integrated cement plant located near Kodla village Distt. Kalaburgi, Karnataka, having contract demand of 30 MVA.
- f) That the Petitioner has also commissioned wind power plant of capacity 21 MW (10 WTGs of 2.1 MW each) in the year 2018. The Renewable Energy generated by this wind plant is being scheduled to and consumed by its cement unit in Karnataka under a Wheeling and Banking Agreement (WBA) dated 05.07.2018, executed between the Petitioner, Gulbarga Electricity Supply Company (GESCOM) and Karnataka Power Transmission Company Ltd. (KPTCL).
- g) That the cement plant at Kodla village Distt. Kalaburgi, Karnataka is also availing facility of Short-Term Open Access for purchasing power through IEX. NOC of 6 MW is being issued by Karnataka SLDC for this purpose.

- h) That the Petitioner, a company incorporated under Companies Act, 1956 is the legal entity owning the above-mentioned cement assets i.e. cement grinding unit in Panipat, Haryana, cement plant at Village-Kodla, Karnataka and 21 MW of captive wind power plant in the state of Karnataka.
- i) That at the legal entity level, consumption of renewable energy as against RPO on account of energy purchased and consumed under open access at the above two cement units (Haryana and Karnataka), is in far excess of the RPO limits prescribed as per Regulations of the respective states.
- j) That RPO limits notified by KERC under Regulation 4(iii) of Karnataka Electricity Regulatory Commission (Procurement of Energy from Renewable Sources) (6th Amendment) Regulations 2016, till 2021-2022 are as under: -

Year	Non-Solar (%)	Solar (%)
2019-20	10.25%	7.25%
2020-21	10.25%	8.50%
2021-22	10.50%	10.50%

- k) That the consumption of excess Renewable energy in the cement unit in Karnataka should be counted as compliance of RPO against conventional energy consumed through open access in our cement unit in the state of Haryana.
- l) That in FY 2019-20 till the month of Dec-19, the Petitioner has consumed approx. 13063 MWh of conventional energy under open access for its cement unit in Haryana. The Petitioner is required to comply with RPO for FY 2019-20 as per Regulation 54 of HERC RE Regulations. The RPO required to be fulfilled for conventional energy consumed under open access till the month of Dec'19 is given below: -

Financial Year	Total Energy for levy of RPO (MWh) (Till Dec'19)	RPO		REC to be Purchased	
		Solar (%)	Non-Solar (%)	Solar	Non-Solar
2019-20	13063	5.50%	3.00%	719	392

- m) That in FY 2019-20, petitioner has also procured approx. 5038 MWh of energy till Dec'19 under open access through IEX for its cement unit in Karnataka. The energy being conventional in nature is required to comply with RPO for FY 2019-20 for the Karnataka unit as well. The RPO calculation for our Karnataka cement unit is given below: -

Financial Year	Total Energy for levy of RPO (MWh) (Till Dec'19)	RPO (%)		REC to be Purchased	
		Solar	Non-Solar	Solar	Non-Solar
2019-20	5038	7.25%	10.25%	365	516

- n) That the petitioner has wheeled 36750 MWh of wind energy from its captive wind power plant till Dec'19 which has been consumed by cement unit in Karnataka. Monthly Energy Statements for period April-19 to Dec-19 issued by GESCOM confirming wheeling of wind energy is enclosed. The summary of month wise wind energy consumption by Karnataka cement plant is also given below:

Month	Wind Energy Consumed (MWh)
Apr-19	2000
May-19	4000
Jun-19	5700
Jul-19	4300
Aug-19	5400
Sep-19	6350
Oct-19	2000
Nov-19	4000
Dec-19	3000
Total	36750

- o) That the combined consumption of conventional energy through open access at the two cement units in the state of Haryana and Karnataka till December'19 is approx. 18101 MWh. The combined Non-Solar RPO requirement up to Dec-19 for these two locations is 908 MWhr, against which the wind energy consumption at Karnataka plant is 36750 MWhr till December'19. This is more than 40 times the combined RPO requirement of the above two units.
- p) That from the above calculation, it is evident that the RPO of both the cement units stands fulfilled by energy consumed from our captive wind power plant at our cement unit in Karnataka. As all the assets whether cement units or wind power plant, belong to the Petitioner and they are to be counted under the ownership of a single legal entity. Thus, consumption of wind energy by Petitioner's cement plant in Karnataka should be accounted towards fulfilment of non-solar RPO of its cement unit located at Panipat, Haryana as well.
- q) That Section 86(1) (e) of Electricity Act 2003 states about promotion of Renewable energy as one of the functions of State Commission. For purpose of ease, the clause is reproduced hereunder: -

“Clause 81(1) (e) promote co-generation and generation of electricity from renewable sources of energy by providing suitable measures for connectivity 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 a distribution licensee.”

- r) That it is abundantly clear from the above section 86(1)(e) of the Electricity Act, 2003 that requirement of renewable consumption, to offset RPO against conventional consumption in the geographical limit of a particular Discom, is not restricted within geographical limits of that particular Discom for a single legal entity thereby implying that excess renewable consumption in other geographical areas falling in different Discoms would satisfy the total RPO of the legal entity owning multiple manufacturing assets.
- s) That Paras 5.2.20, 5.12.1 and 5.12.2 of National Electricity Policy deals with promotion of renewable energy and also enable State Electricity Regulatory Commission to take various step to support encouragement of renewable energy in the respective state. For purpose of ease the paras are reproduced hereunder: -

“5.2.20 Feasible potential of non-conventional energy resources, mainly small hydro, wind and bio-mass would also need to be exploited fully to create additional power generation capacity. With a view to increase the overall share of non-conventional energy sources in the electricity mix, efforts will be made to encourage private sector participation through suitable promotional measures.

5.12.1 Non-conventional sources of energy being the most environment friendly there is an urgent need to promote generation of electricity based on such sources of energy. For this purpose, efforts need to be made to reduce the capital cost of projects based on non-conventional and renewable sources of energy. Cost of energy can also be reduced by promoting competition within such projects. At the same time, adequate promotional measures would also have to be taken for development of technologies and a sustained growth of these sources.

5.12.2 The Electricity Act 2003 provides that co-generation and generation of electricity from non-conventional sources would be promoted by the SERCs by providing suitable measures for connectivity with grid and sale of electricity to any person and also by specifying, for purchase of electricity from such sources, a percentage of the total consumption of electricity in the area of a distribution licensee. Such percentage for purchase of power from non-conventional sources should be made applicable for the

tariffs to be determined by the SERCs at the earliest. Progressively the share of electricity from non-conventional sources would need to be increased as prescribed by State Electricity Regulatory Commissions. Such purchase by distribution companies shall be through competitive bidding process. Considering the fact that it will take some time before non-conventional technologies compete, in terms of cost, with conventional sources, the Commission may determine an appropriate differential in prices to promote these technologies.”

- t) That National Electricity Policy also emphasizes on development of renewable energy resources irrespective of geographical limits of a particular Discom. Therefore, it can conveniently be deciphered that excess renewable consumption in other geographical areas falling in different Discoms would satisfy the total RPO requirement of the legal entity owning multiple manufacturing assets.
- u) That even HERC (Terms and Conditions for Determination of Tariff from Renewable Energy Sources, Renewable Purchase Obligation and Renewable Energy Certificate) Regulations, 2017, which stipulates RPO on consumption on conventional energy, does not mandate renewable energy consumption within the geographical limits of same Discom within which the consuming industrial unit is situated.
- v) That the principle of exclusion of geographical limits, as emphasized above, is also validated by REC regime. In fact, under REC mechanism, REC certificates generated in particular state are being utilized to offset RPO in a totally different state. Infact, REC's carry no geographical connotation.

Proceedings in the Case

- 3. The matter was heard on 24.09.2020 as scheduled, through virtual court (Video Conferencing). Sh. Amarjeet Singh appearing on behalf of the Petitioner mainly reiterated the contents of the Petition, which for the sake of brevity have not been reproduced herein. Per contra, Shri R.S. Poonia, appearing on behalf of HAREDA vehemently objected to the relief sought by the Petitioner and even denied certain contents of the Petition as wrong. The submissions of HAREDA are tabulated below:-

4. HAREDA affidavit dated 02.09.2020:

Para 1,2,3 & 4-	Contents of paras 1,2,3 & 4 are matter of record thus not replied									
Para 5,6,7 & 8-	Contents of Paras 5,6,7 & 8 are denied for want of knowledge because claim of petitioner cannot be verified.									
Para 9-	Contents of this para are wrong and hence denied. The Petitioner has short fall of 0.1605 MU in Solar RPO and 0.0403 MU in Non-Solar RPO for their plant at Panipat, Haryana.									
Para 10-	Content of Para 10 is matter of record thus not replied.									
Para 11-	Contents of Para 11 are wrong and hence denied. It is submitted that RPO and REC Regulations has been incorporated to promote the generation of power from Renewable Energy Sources. There are many states in the country which are Renewable Energy source surplus as Karnataka, Tamil Nadu, Maharashtra, Andhra Pradesh, Gujarat and Rajasthan due to their long coastal line. States such as Haryana, Punjab, Delhi are land locked states and these are Renewable Energy source deficient. Accordingly, States has their own RPO target on basis of renewable energy sources. Haryana state has limited non-solar RE resources, accordingly, Non-solar RPO target is 3% up to 2021-2022 is pegged for Obligated Entities situated in Haryana and for Karnataka it is 10.50%. So, to promote Renewable energy in Haryana, consumption of the excess renewable energy in the cement unit in Karnataka should not be counted as compliance of RPO against conventional energy consumed through open access by Petitioners in Haryana.									
Para 12-	Contents of Para 12 are wrong and hence denied. The RPO required to be fulfilled for conventional energy consumed under open access during the year 2019-20 is as under:									
	FY	Total energy for levy of RPO (MWh)	RPO		RE Power Purchased/ Generated (MWh)		REC to be purchased		REC Purchased	
			Solar (5.50%)	Non-Solar (3.00%)	Solar	Non-Solar	Solar	Non-Solar	Solar	Non-Solar
	2019-20	18834.85	1036	565	596.4	0	440	565	279	522
Para 13-	Contents of Para 13 are denied for want of knowledge. The conventional/Renewable energy consumption of petitioner in Karnataka cannot be verified. Hence the RPO compliance of Petitioner by consuming excess RE power cannot be relied upon.									
Para 14-	Contents of Para 14 are denied for want of knowledge. Contents of reply to Para no. 13 may be read as a part and parcel of this para.									
Para 15-	Contents of Para 15 are denied for want of knowledge. Contents of reply to Para no. 13 may be read as a part and parcel of this para.									
Para 16-	Contents of Para 16 are denied for want of knowledge. Contents of reply to Para no. 13 may be read as a part and parcel of this para.									
Para 17-	Contents of Para 17 are matter of record thus not replied.									
Para 18-	Contents of Para 18 are wrong and hence denied. RPO target and its compliance is state specific. Hence it is wrong to say that it does not have geographical limit.									
Para 19-	Contents of Para 19 are matter of record thus not replied.									
Para 20-	Contents of Para 20 are wrong and hence denied. It is however submitted the RPO target and its compliance are state specific.									
Para 21-	Contents of Para 21 are matter of record, thus not replied.									

Para 22-	Contents of Para 22 are matter of record, thus not replied. It is however submitted that verifying the data of Obligated Entity for their conventional/ Renewable Energy consumption/generation in other state is not viable. Hence the REC mechanism has been adopted. Wherein the obligated entities can fulfil their RPO by purchasing REC through power exchange.
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In view of the above submissions HAREDA has prayed that the Petition may be dismissed mainly on the grounds of shortfall in fulfilment of RPO by the petitioner, energy consumption of petitioner in Karnataka cannot be verified and each State has different RPO targets based on the renewable energy resources available in that particular State.

5. HPPC / UHBVN did not file any reply / response to the issues raised in the present petition. The representative of HPPC present in the hearing submitted that they do not want to exercise their right for filing reply in the present matter. However, he submitted that Renewable Energy has two components i.e. Renewable Energy Certificate (REC) and Renewable Purchase Obligation (RPO). RPO of an obligated entity in Haryana cannot be offset by RE Generation in Karnataka as prayed for the petitioner herein.

Commission's Analysis and Order

6. The Commission has carefully examined the Petition and reply thereto filed by HAREDA. The Commission in the hearing held on 24.09.2020 heard the Petitioner and HAREDA at length. At the onset, the Commission observes that as per the eligibility criteria of the Central Commission, the RE based CGPs having date of commissioning prior to 29th September, 2010 or after 31st March 2016 and not registered with the Central Agency before 30th June 2016 shall not be eligible to participate in the REC framework. Further, self-retention facility shall be available only in respect of the CGPs commissioned during the period from 29th September, 2010 to 31st March 2016. As a corollary, RE based CGPs set up after 31st March, 2016 can participate under REC mechanism like any other RE Generator if they otherwise meet the eligibility criteria for REC. Hence, such RECs can be separately sold at the power exchanges approved by the CERC and the parent company can purchase the requisite RECs from the exchange for RPO compliance.
7. In the above background, the Commission has also examined the relevant provisions of HERC RE Regulations, 2017, as under:-

8. The Commission observes that following RPO obligations have been specified under Regulation clause no. 54 HERC RE Regulations, 2017:-

“54. Renewable Purchase Obligation. –

- (1) Every obligated entity including distribution licensee, consumers owning captive power plant and open access consumers including short term open access consumers in Haryana, shall purchase energy from renewable energy sources under the Renewable Purchase Obligation (RPO) as under:-*

FY	Minimum RPO (%) of Total Consumption Excluding Hydro	
	Non-Solar	Solar
2016-17	2.75	1.00
2017-18	2.75	2.50
2018-19	3.00	4.00
2019-20	3.00	5.50
2020-21	3.00	7.00
2021-22	3.00	8.00

”

The Commission further observes that the Ministry of Power, Government of India, vide its notification dated 22.07.2016 & 14.06.2018, has specified the following RPO targets:-

FY	Non-Solar	Solar
2016-17	8.75	2.75
2017-18	9.50	4.75
2018-19	10.25	6.75
2019-20	10.25	7.25
2020-21	10.25	8.75
2021-22	10.50	10.50

It is apparent from the above, the Commission has already fixed RPO targets in the State of Haryana, which is much below the targets fixed by Ministry of Power. The comparative RPO targets have been fixed by the Commission, considering various factors including the availability of renewable energy resources in the State of Haryana. Given the above factual matrix, in case the intention was to set-off renewable energy generated in some other State, against the renewable energy obligation in one State, then there may not be any requirement to fix separate RPO targets by respective States.

The Commission finds some merit in the submission of State Nodal Agency HAREDA that verification of renewable energy consumption of the petitioner in Karnataka is not viable. It is added that energy generated from the RE CGP of the petitioner in Karnataka and self-consumption / retention thereto is not verifiable unless the CGP is registered with the Central Agency by 31st March 2016.

The Commission has perused the regulation 66 of the HERC RE Regulations relied upon by the petitioner for seeking relief in the present case. It is observed that the ibid regulation provides for issue of Orders and procedural direction with regard to implementation of the HERC RE Regulations within the four corners of the Act and the RE Regulations framed thereunder. The relief sought herein is neither specifically covered under the Act nor the HERC RE Regulations as such.

9. In view of the above findings including CERC dispensation on the issue, the Commission is of the considered view that it is open for the petitioner herein, in case they are eligible, to sell RECs emanating from the RE CGP in Karnataka separately at the power exchanges approved by the CERC and the petitioner's company in Haryana can purchase the requisite RECs from the exchange for RPO compliance in accordance with the HERC RPO target in vogue. The Commission has also taken note of the fact as also agreed to by the Petitioner as well as HAREDA that no SERCs, so far, have allowed the dispensation as prayed for by the petitioner herein.
10. The Commission has carefully perused the Submissions of the Petitioner that under section 86(1)(e) of the Electricity Act, 2003 requirement of renewable consumption, to offset RPO against conventional consumption in the geographical limit of a particular Discom, is not restricted within geographical limits of that particular Discom for a single legal entity thereby implying that excess renewable consumption in other geographical areas falling in different Discoms would satisfy the total RPO of the legal entity owning multiple manufacturing assets. It is observed the Section (Supra) provides for promotion of RE generation by providing suitable measure of connectivity with the Grid and sale of electricity to any person and also a percentage of the total consumption of electricity in the area of a distribution licensee. The Commission, as previously mentioned has specified the requisite RPO percentage that can be fulfilled either by purchase of RE Power or RECs irrespective of the geographical area. Such statutory obligation / function of SERC is State specific. Hence, the interpretation to the said Section of the Act given by the petitioner is far fetched and unacceptable unless such interpretation comes from a Court / Tribunal of competent jurisdiction.
11. The provisions of National Electricity Policy cited by the petitioner has been perused. The Commission observes that they mostly refer to feasibility potential, additional RE Generation and encouraging private sector participation in RE generation. It is reiterated that, based on RE Potential in Haryana, the RPO targets have been fixed in Haryana. Further, to encourage RE Generation and private sector participation thereto, the HERC RE Regulations as well as

RE promotional policies of the State Government / HAREDA notified and amended from time to time as well as competitive bids for RE Power floated by the Discoms / HPPC provides for adequate opportunity for private sector participation and additional power generation from RE sources in Haryana.

12. In light of the above the Commission finds the prayer of the Petitioner devoid of merit. Accordingly, rejects the same.

This order is signed, dated and issued by the Haryana Electricity Regulatory Commission on 28.09.2020.

Date: 28.09.2020
Place: Panchkula

(Naresh Sardana)
Member

(Pravindra Singh Chauhan)
Member

(D.S. Dhesi)
Chairman