

**Before the**  
**MAHARASHTRA ELECTRICITY REGULATORY COMMISSION**  
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**Case No. 111 of 2020**

**Case of Captive Power Producers Association Seeking permission to exercise the option or otherwise for the Financial Year 2020-2021 as per the Order dated 22 May 2019 passed by the Commission in Case No. 68 of 2019**

Captive Power Producers Association ..... Petitioner

Maharashtra Energy Development Authority ..... Respondent

**Coram**

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

**Appearance**

For the Petitioner : Smt. Deepa Chavan (Adv.)  
For the Respondent : Dr. J.V Torane (Rep.)

**ORDER**

**Date: 6 October, 2020**

1. Captive Power Producers Association (**CPPA**) has filed the present Petition on 16 July 2020 seeking appropriate directions/ reliefs towards exercising the option granted to CPPA by the Commission by its Order dated 22 May 2019 in Case No. 68 of 2019.
2. **CPPA's main prayers are as follows:**
  - a) *The Commission be pleased to allow the members of the Applicant Association to exercise the option as per the order dated 22 May, 2019 in Case No. 68 of 2019 by F. Y. 2020-2021.*

- b) *in the alternative to prayer (a), allow the members of the Applicant Association to exercise their option within such time as the Commission deems fit after the exercise and dispensation as contained in the order dated 22 May, 2019 in Case No. 68 of 2019, is undertaken by MEDA;*

**3. CPPA in its Case has stated as follows:**

- 3.1. CPPA had filed the Petition in Case No. 68 of 2019 before the Commission, seeking rollover of the Renewable Purchase Obligation (RPO). The Commission in its Order dated 22 May 2019 gave the dispensation given below with the following directions:

*“12. Alternatively 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 any 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 the alternative option will address the concerns of the Petitioner about the possible hardship in case it succeeds in the High Court.*

*13. The Commission directs MEDA to submit the relevant past data for the FY 2014-15 to 2016-17 within 45 days of this order so as to enable the Commission to take up the verification process. The Commission will deal with the period beyond 2016-17 in its order of verification for the year 2014-15 to 2016-2017.*

**ORDER**

*1. The Case no. 68 of 2019 is partly allowed.*

*2. Fossil fuel based cogeneration plants are allowed to fulfill their cumulative RPO targets by March 2020 after the Commission completes the verification process for the years 2014-15 to 2016-17.*

*3. In the alternative, the petitioner can avail option as per para 12 above after the Commission completes the verification process for the years 2014-15 to 2016-17.”*

- 3.2. The Commission granted an option to the members of the CPPA, as set out in the Order exercise of which shall be considered by Maharashtra Energy Development Authority (MEDA), in letter and spirit.

- 3.3. Pursuant to the Order dated 22 May 2019 passed by the Commission, the members of CPPA from September 2019 started approaching MEDA for guidance towards deposit of RPO shortfall as regards the mode, manner, method and computation of payment, in the event the members were to exercise that particular option. It was orally informed by MEDA that they have no instructions to accept the said deposit towards RPO from the obligated entities. One of the members of CPPA, M/s Vinati Organic Ltd has also addressed a letter to CPPA regarding the same. On 27 February 2020, a follow up e-mail was addressed by CPPA to MEDA.
- 3.4. CPPA, by its email dated 20 March 2020 approached the Commission seeking appropriate directions/reliefs towards exercising the option as contained in the Order dated 22 May 2019 in Case No. 68 of 2019.
- 3.5. MEDA by its e-mail dated 25 April 2020 requested to furnish details of the Association members who desire to exercise the option of deposit of amount as per the Order dated 22 May 2019. CPPA, by its e-mail dated 6 May 2020 sent a detailed reply to MEDA
- 3.6. The recent lockdown due to COVID-19 has resulted in major disruptions in all the business activities and has resulted in crisis of managing cash outflows in near term. Due to the prolonged conditions, this has also affected all businesses presently and it will take a while before the industries can return to normalcy
- 3.7. Its association members are facing challenges in meeting some of the fixed expenses, which they incur even during the time of lockdown, such as salaries to employees, payment to small contractors, lease rentals, office overheads, fixed cost of electricity, taxes and duties etc. However, due to closure of all industrial activities and all markets world over, there is no source of income for industries. Under such circumstances, the Industries will keep facing cash liquidity problem for time to come, even after the situation becomes normal. There has been a change of scenario, post passing of the Order dated 22 May 2019 in Case No. 68 of 2019, and the association members are also awaiting dispensation from MEDA. Therefore, equitable consideration ought to be applied to enable the Applicant to exercise the option in terms of the Order dated 22 May 2019 in Case No. 68 of 2019.
- 3.8. CPPA's Writ Petition (Writ Petition No. 269 of 2019) regarding RPO exemption for Captive users of Fossil fuel based Co-generation plants, is pending adjudication before the Hon'ble High Court of Bombay. As High Court is not fully functional due to the pandemic, CPPA is not able to move the Petition and the same remains pending for adjudication.

**4. MEDA made the following submissions dated 13 July 2020:**

- 4.1. CPPA or members of CPPA did not approach MEDA for clarification regarding the deposition of amount as per Para No. 12 of Order dated 22 May 2019 until email from CPPA 18 March 2020. Additional clarification from MEDA beyond the Order of the Commission mentioned above was not necessary.
- 4.2. Bharat Petroleum Corporation limited (BPCL) and Oil and Natural Gas Corporation (ONGC) approached MEDA regarding the deposition of amount as per the Order dated 22 May 2019 in Case No. 68 of 2019. MEDA approached the Commission for direction in that regard. The Commission in response has conveyed methodology of calculating the amount.
- 4.3. MEDA requested CPPA also to provide the list of all the entities involved in Case No. 68 of 2019. CPPA till date has never responded not provided the list of Members.
5. At the e-hearing through video conferencing held on 25 September 2020, the representative of the Petitioner and Respondent reiterated their submissions. CPPA has further added request of allowing Bank Guarantee instead of depositing the amount with MEDA.
6. **CPPA made the below additional submission on 26 September 2020:**
  - 6.1. CPPA has prayed for the following options:
    - i) to deposit the amounts towards RPO compliance by 31 March 2021 with MEDA or;
    - ii) to allow to purchase REC certificate towards RPO compliance for the previous years by 31 March 2021.
  - 6.2. Considering the present COVID-19 pandemic and the economic slowdown, the Commission is requested to allow members of CPPA the option of furnishing Bank Guarantee, instead of depositing amount, to MEDA towards RPO compliance for the previous years by 31 March 2021 till the Writ Petition filed before the Bombay High Court is decided.

### **Commission's Analysis and Rulings**

7. CPPA had earlier filed a Petition under Case No. 68 of 2019 seeking rollover of its RPO for FY 2016-17, FY 2017-18 and FY 2018-19 to FY 2019-20. In that proceeding, the Commission noted that CPPA had filed a Writ Petition before the Hon'ble Bombay High Court seeking RPO exemption for Captive users of Fossil fuel based Co-generation plants. Accordingly, in that matter vide its Order dated 22 May 2019, the Commission gave following dispensation:

*“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. Alternatively 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 any 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 the alternative option will address the concerns of the Petitioner about the possible hardship in case it succeeds in the High Court.*

*13. The Commission directs MEDA to submit the relevant past data for the FY 2014-15 to 2016-17 within 45 days of this order so as to enable the Commission to take up the verification process. The Commission will deal with the period beyond 2016-17 in its order of verification for the year 2014-15 to 2016-2017.”*

Thus, the Commission has allowed CPP Users to meet their RPO targets cumulatively by March 2020. In that Order, considering pending Writ Petition before the Hon’ble High Court, the Commission has also provided option of depositing amount equivalent to the REC floor price of RPO shortfall with MEDA.

8. Now through present Petition, CPPA has requested further time upto March 2021 for cumulatively meeting their RPO targets. In support of their request it is stated that post issuance of Commission’s Order dated 22 May 2019, CPPA Members approached MEDA for guidance for deposit of amount towards RPO shortfall, however, MEDA did not provide any clarification. MEDA has opposed such contention and stated that formal request for clarification was received only on 18 March 2020. MEDA has also contended that Order of the Commission is self-explanatory, and no further clarification is required.
9. In this regard, the Commission is not inclined to go into counter claims of parties about seeking clarifications. The Commission notes that till March 2020 i.e. due date for complying with cumulative RPO targets, none of the CPP users approached the Commission seeking clarification with respect to the Order dated 22 May 2019 in Case No. 68 of 2019. However,

at the request of MEDA, the Commission vide its letter dated 14 April 2020 has provided following clarification with respect of option provided in Order dated 22 May 2019:

*“1.1 Fossil fuel based CPP who wants to exercise option provided by the Commission in its order dated 22 May 2019 for complying with RPO are required to deposit amount equivalent to REC floor price with MEDA computed based on following*

- a. RPO shortfall in FY 2013-14 as verified by the Commission vide order dated 4 May 2018.*
- b. RPO shortfall for the period FY 2014-15 to FY 2017-18 based on verification Report prepared by MEDA and submitted to the Commission.*
- c. For all subsequent years, based on self-assessment of concerned obligated entity.*

*1.2 After completion of RPO compliance verification by the Commission, difference if any in RPO shortfall unit can be adjusted with the deposited amount”*

Above clarification is self-explanatory and needs no further clarification except issue of REC floor price. The Commission notes that Central Electricity Regulatory Commission (CERC) vide its Order dated 17 June 2020 has revised REC forbearance and floor price as Rs 1/kWh and Rs. 0/kWh. This Order of the CERC is presently stayed by the Hon’ble Appellate Tribunal for Electricity (APTEL). However, this CERC Order creates anomalous situation of nil floor price of RECs and hence in terms of this Commission’s Order dated 22 May 2019, CPP Users would not be required to deposit any amount with MEDA towards RPO shortfall. In order to avoid such anomaly the Commission clarifies that in case REC floor prices is stipulated as zero, then whilst exercising option given in Order dated 22 May 2019, CPP Users have to deposit the amount at rate of average of floor and forbearance price of RECs.

10. Having clarified about option given in its Order dated 22 May 2019, the Commission notes that CPPA has requested additional time upto March 2021 for meeting cumulative RPO target and also requested for option of giving Bank Guarantee, instead of depositing the RPO shortfall amount to MEDA. The Commission notes the fact that Writ Petition challenging RPO applicability to CPP Users is still sub judice before the High Court. The Commission also acknowledges the contemporary hardship faced by the industries due to lockdown and economic slowdown due to management of COVID-19 pandemic. Further, CPPA has shown willingness to exercise option provided by the Commission in Order dated 22 May 2019 for complying with RPO targets. Considering these facts, the Commission allows CPP Users to fulfil their cumulative RPO targets by March 2021. The Commission doesn’t think it is

appropriate to substitute the deposit of equivalent amount of REC with bank guarantee. It is primarily the responsibility of every obligated entity to comply with the statutorily mandated RPO. Commission has already given a concession to CPPA in terms of option to deposit the equivalent amount pending resolution of their grievance before Hon'ble High Court. The Commission doesn't intend to dilute the obligation any further by adopting a tedious process asking MEDA to track validity of bank guarantees of every CPPA member and liaise with banks to encash the same.

11. For the sake of completeness, the Commission would like to mention that in its Order dated 5 October 2020 in Case No. 130 of 2020 (Petition filed by CPPA), using its powers to remove difficulties and to give effect to Ministry of Power's clarifications dated 1 February 2019 and 1 October 2019, the Commission has revised CPP User's RPO targets for FY 2016-17 to FY 2019-20. The same shall be considered while arriving at cumulative RPO targets to be met by CPP Users.


12. Hence, the following Order.

### **ORDER**

- 1. Case No. 111 of 2020 is partly allowed.**
- 2. Fossil fuel-based cogeneration captive power plants are allowed to fulfill their cumulative Renewable Purchase Obligation targets by 31 March 2021.**
- 3. The computation of amount, Renewable Purchase Obligation targets and option for compensation for Fossil-fuel based co-generation captive power plants shall be as per Paras 9, 10 and 11 above.**

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

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

  
**(Abhijit Deshpande)  
Secretary**

