

Before the
MAHARASHTRA ELECTRICITY REGULATORY COMMISSION
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Case No. 130 of 2020

Case of Captive Power Producers Association Seeking capping of RPO for captive power plants and to relax or waive the provisions of the MERC RPO Regulations, 2016

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 : Sh. Arif Sheikh (Rep.)

ORDER

Date: 5 October, 2020

1. Captive Power Producers Association (CPPA) has filed the present Petition on 16 July 2020 seeking relaxation or waiver/removal of difficulty/issuance of orders and practice direction / amendment (as alternative relief) under the Maharashtra Electricity Regulatory Commission (Renewable Purchase Obligation, Its Compliance And Implementation of Renewable Energy Certificate Framework) Regulations, 2016, in view of circular dated 1 February 2019 and 1 October 2019 issued by Government of India (GoI) through Ministry of Power (MoP) regarding capping of Renewable Purchase Obligation (RPO) for Captive Power Plants (CPP)

2. CPPA's main prayers are as follows:

- a) *The Commission be pleased to relax or waive the provisions of the MERC RPO Regulations, 2016 to give effect to and implement the Government of India, Ministry of Power's circular dated 01.02.2019 and 01.10.2019 so as to ensure capping of the RPO for captive power plants as per the Ministry of Power's Clarification orders.*
- b) *In alternative to other prayers, the Petitioner prays that, this Hon'ble Commission be pleased to issue orders and practice directions to give effect to and implement the Government of India, Ministry of Power's circular dated 01.02.2019 and 01.10.2019, so as to ensure capping of the RPO for captive power plants as per the Ministry of Power's Clarification orders.*
- c) *In alternative to other prayers, the Petitioner prays that, this Hon'ble Commission be pleased to remove difficulty by general of specific orders, to give effect to and implement the Government of India, Ministry of Power's circular dated 01.02.2019 and 01.10.2019 so as to ensure capping of the RPO for captive power plants as per the Ministry of Power's Clarification orders.*
- d) *In alternative to other prayers, the Petitioner prays that, this Hon'ble Commission be pleased to consider the Government of India, Ministry of Power's circular dated 01.02.2019 and 01.10.2019, and amend/or relax the Maharashtra Electricity Regulatory Commission (Renewable Purchase Obligation Its Compliance And Implementation of Renewable Energy Certificate Framework) Regulation 2016 so as to ensure capping of the RPO for captive power plants as per the Ministry of Power's Clarification orders*

3. CPPA in its Case has stated as follows:

- 3.1. On 30 March 2016, the Commission notified Maharashtra Electricity Regulatory Commission (Renewable Purchase Obligations, its compliance and implementation of REC framework) Regulations, 2016 (RPO-REC Regulations 2016).
- 3.2. The said Regulations make it obligatory upon the Obligated Entities (OE) to procure renewable power. Regulation 12 of RPO-REC Regulations 2016 further provides that in case the OE fails to fulfil the RPO target, State Commission may direct it to deposit in a separate fund, 'RPO Regulatory Charges', i.e. such amount as the Commission may determine on the basis of highest applicable preferential tariff during the year or 'Forbearance price' decided by the Central Commission.

- 3.3. On 1 February 2019, Government of India (GoI) through Ministry of Power (MoP) issued clarification on Orders related to RPO as notified Para 6.4(1) of the Tariff Policy notified the Long-Term growth trajectory of RPO:

“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 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 CPPs without any additional fossil fuel capacity being added.”

- 3.4. On 1 October 2019, GoI through MoP issued further clarifications relating to renewable purchase obligations. The letter records as under:

“3. Based on the concerns raised by various stakeholders and after due consultation with MNRE, CEA and CERC it is further clarified that:

(i) for CPPs commissioned before 1st April, 2016, RPO should be at the level as mandated by the appropriate Commission for the year 2015-16. For CPPs commissioned from 1st April, 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 obligations, CPP has surplus powers then its consumption requirements, such a CPP may sell its surplus power to Discoms under the prevailing arrangements or in the Power exchange.

- 3.5. On 27 December 2019, the Commission published the Maharashtra Electricity Regulatory Commission (Renewable Purchase Obligation, Its Compliance And Implementation of Renewable Energy Certificate Framework) Regulation, 2019 (RPO-REC Regulation, 2019). Regulation 7.5 states as under:

“Provided that in case of Captive user of a Captive generating Plant commissioned before 1st 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

Provided further that in case of any augmentation of the Captive generating Plant, the RPO target for augmented capacity shall be equal to the RPO target applicable for the year in which such augmented capacity has been commissioned”

- 3.6. The Commission has already taken into consideration the said circular of the MoP in its RPO-REC Regulations, 2019. Thus, though the MoP directive has been issued on 1 February 2019, CPPA has been denied relief under the said circular. Regulation 16 of the RPO-REC Regulations, 2016 specifically confers power on the Commission to relax or waive any of the provisions of the Regulations.
- 3.7. The Commission while publishing the RPO-REC Regulation 2019, has considered the clarificatory order dated 1 February 2019 subsequently amended on 1 October 2019 with respect to capping of RPO. However, the provision has been implemented from 1 April 2020. The Commission ought to incorporate the similar provision in the RPO-REC Regulations, 2016.
- 3.8. The issue of capping of RPO on CPP as per MoP’s clarification dated 1 February 2019 was raised in the case of verification of compliance of RPO by MSEDCL for FY 2017-18,. The Commission in that Order dated 27 March 2019 mentioned as under:

“As regards the issue of RPO compliance of CPP in the light of clarification issued by MoP vide letter dated 1 February, 2019, the Commission notes that obligated entities have to comply with RPO as specified in the Regulations. The Commission will initiate the next proceedings of RPO Compliance for three years starting from FY 2014-15 to FY 2016-17 once the consolidated data of OA Consumers and CPP Users is received from MEDA. Any impact of MoP’s clarification can be dealt with during proceedings of RPO compliance of OA consumers and CPP users or through amendment of Regulations as deemed appropriate at that time.”

- 3.9. Further, in subsequent Order dated 22 May 2019 in Case No. 71 of 2019, on similar issue, the Commission has given the below dispensation:

“9 The Commission notes that this issue of clarification regarding MoP’s letter dated 1 February, 2019 has been raised during recent RPO Verification proceeding of various Obligated Entities. The Commission through its Order dated 27 March, 2019 in Case No. 36 of 2019 has addressed this issue as follows:

“23...As regards the issue of RPO compliance of CPP in the light of clarification issued by MoP vide letter dated 1 February, 2019, the Commission notes that obligated entities have to comply with RPO as specified in the Regulations. The Commission will initiate the next proceedings of RPO Compliance for three years starting from FY 2014-15 to FY 2016-17 once the consolidated data of OA Consumers and CPP Users is received from MEDA. Any impact of MoP’s clarification can be dealt with during proceedings of RPO compliance of OA consumers and CPP users or through amendment of Regulations as deemed appropriate at that time...”

- 3.10. On 31 December 2019, as per the MoP’s clarification dated 1 October 2019, OERC issued a Notification regarding capping of RPO by exercising its power to remove difficulties. Further, RERC also amended its Regulations on 4 April 2020.
- 3.11. The RPO-REC Regulations 2016 confer power under Regulation 19 to this Commission to remove difficulty. Similarly, Regulation 17 also confer power to issue orders and practice direction. CPPA submits that the present case falls for exercise of the powers by this Commission.
4. **MEDA made the following submissions dated 30 July 2020:**
 - 4.1. Various previous Orders of the Commission itself clarify the prayers of the CPPA and the RPO-REC Regulations 2019 had covered guidelines issued by GoI in their circular dated 1 October 2019.
 - 4.2. The composite RPO target with respect to energy procurement by the captive generating plant for fulfilment of RPO is 9%. MEDA needs a bifurcation of this 9% target in terms of Solar or Non-solar sources. In this regard the Commission may issue guidelines.
5. At the e-hearing through video conferencing held on 25 September 2020, the representative of the Petitioner and Respondent reiterated their submissions.

Commission’s Analysis and Rulings

6. Present Petition has been filed by CPPA seeking relaxation in RPO-REC Regulations, 2016 for Captive Power Plants in terms of GoI’s communication dated 1 February and 1 October 2019. The Commission notes that Petitions seeking similar relief has already been decided by this Commission. Therefore, it is important to summarise relevant sequence of events in this matter as follows:

6.1. The Commission notified the Maharashtra Electricity Regulatory Commission (Renewable Purchase Obligations, its compliance and implementation of REC framework) Regulations, 2010 (RPO-REC Regulations 2010) on 7 June 2010 and provided below RPO targets to the OEs:

Year	RPO Targets		
	Solar	Non-Solar	Total
FY 2010-11	0.25%	5.75%	6.00%
FY 2011-12	0.25%	6.75%	7.00%
FY 2012-13	0.25%	7.75%	8.00%
FY 2013-14	0.50%	8.50%	9.00%
FY 2014-15	0.50%	8.50%	9.00%
FY 2015-16	0.50%	8.50%	9.00%

6.2. Further, on 30 March 2016 the Commission notified the RPO-REC Regulations 2016 with the below RPO targets for OEs:

Year	RPO Targets		
	Solar	Non-Solar	Total
FY 2016-17	1.00%	10.00%	11.00%
FY 2017-18	2.00%	10.50%	12.50%
FY 2018-19	2.75%	11.50%	13.75%
FY 2019-20	3.50%	11.50%	15.00%

6.3. On 1 February 2019, GoI/MoP issued clarification on Orders related to RPO as notified Para 6.4(1) of the Tariff Policy relating to the Long Term growth trajectory of RPO:

“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 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 CPPs without any additional fossil fuel capacity being added.”

6.4. During the Public Hearing proceeding of MSEDCL’s RPO verification for FY 2017-18 in Case No. 36 of 2019, one of the objectors referred to MoP’s clarification dated 1 February 2019. The Commission in its Order dated 27 March 2019 in this matter has made following observations relating to MoP’s letter dated 1 February 2019:

“23.....As regards the issue of RPO compliance of CPP in the light of clarification issued by MoP vide letter dated 1 February, 2019, the Commission notes that obligated entities have to comply with RPO as specified in the Regulations. The Commission will initiate the next proceedings of RPO Compliance for three years starting from FY 2014-15 to FY 2016-17 once the consolidated data of OA Consumers and CPP Users is received from MEDA. Any impact of MoP’s clarification can be dealt with during proceedings of RPO compliance of OA consumers and CPP users or through amendment of Regulations as deemed appropriate at that time ...”

6.5. Further, similar dispensation was provided by the Commission in its Order dated 22 May 2019 in Case No. 71 of 2019 in the matter of Century Rayon seeking exemption from RPO based on MoP’s communication dated 1 February 2019.

6.6. On 1 October 2019, GoI through MoP issued further clarifications relating to RPO targets for CPPs:

“3. Based on the concerns raised by various stakeholders and after due consultation with MNRE, CEA and CERC it is further clarified that:

(i) for CPPs commissioned before 1st April, 2016, RPO should be at the level as mandated by the appropriate Commission for the year 2015-16. For CPPs commissioned from 1st April, 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 obligations, CPP has surplus powers then its consumption requirements, such a CPP may sell its surplus power to Discoms under the prevailing arrangements or in the Power exchange.”

6.7. On 30 December 2019, the Commission notified the RPO-REC Regulations 2019 suitably incorporating the MoP’s clarificatory Orders dated 1 February 2019 and 1 October 2019, with respect to capping of RPO for CPPs. The relevant clauses of the RPO-REC Regulations 2019 are reproduced below:

“7.5 Distribution Licensee with peak demand less than 10 MW, a Captive User of a Captive Generating Plant with installed capacity of 1 MW and above, and Open

Access Consumers with Contract Demand of 1 MW and above, shall be required to meet only their composite RPO target set out in column (c) of the Table above annually :

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:

Provided further that in case of any augmentation of the Captive Generating Plant, the RPO target for augmented capacity shall be equal to the RPO target applicable for the year in which such augmented capacity has been commissioned:

Provided also that each Distribution Licensee shall include its plan for procurement of power from RE sources in its long-term power procurement plan such as would meet the RPO target specified above.”

7. Thus, the Commission notes that its RPO-REC Regulations 2016 require CPP, which is Obligated entity, to comply with RPO targets specified in that Regulations. However, MoP's clarification dated 1 February 2019 stated that RPO targets for CPP are to be pegged at level which was applicable at the time of commissioning of the CPP. On the Petition seeking implementation of such clarification from MoP, the Commission decided to look into the issues at the time of RPO Verification Process. Thereafter, MoP vide further clarification dated 1 October 2019 stated that CPP commissioned before 1 April 2016 would have to meet RPO target set by the Commission for FY 2015-16. The Commission has implemented the said clarification in RPO-REC Regulations, 2019 notified on 30 December 2019.
8. The CPPA through present Petition has prayed that provision similar to that made in RPO-REC Regulations 2019 should be incorporated, by means of issuing clarificatory orders/practice direction/ amendment to the RPO-REC Regulations 2016.
9. The Commission further notes that in its Order dated 1 September 2020 in Case No. 65 of 2020 in the similar matter of ONGC, it has given the below dispensation:

“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.”

10. The Commission underscores that in its earlier Orders dated 27 March 2019 and 22 May 2019 in Case No. 36 of 2019 and 71 of 2019, respectively, it has asked to initiate the proceedings of RPO compliance by CPPs from FY 2014-15 to FY 2016-17 and to address the MoP’s clarifications in those proceedings. However, due to various reasons such proceedings have not been initiated. It is also a fact that RPO-REC Regulations 2016 have been challenged before the Hon’ble Bombay High Court by CPPA and the matter is still pending adjudication.

11. With the existing RPO targets notified for CPPs under RPO-REC Regulations 2016, the CPPs must comply with the composite RPO targets of 11% to 15% from FY 2016-17 to FY 2019-20. Whereas, as per the RPO-REC Regulations 2019, for the CPPs commissioned before 1 April 2016, their composite RPO target is 9% from FY 2020-21 to FY 2024-25. This creates a situation wherein RPO targets for past period (RPO-REC Regulations 2016) is more than present or future RPO targets (RPO-REC Regulations 2019). Such situation is not as per normal circumstances wherein RPO targets gradually increases over the period. In present circumstances, RPO targets have been reduced for CPPs from FY 2020-21 onwards. Therefore, in the opinion of the Commission, this is a fit case for its intervention. Regulation 19 of RPO-REC Regulations 2016 vests the Commission the ‘Power to Remove Difficulties’ under certain circumstances. Regulation 19 is extracted below:

“19 Power to Remove Difficulties

If any difficulty arises in giving effect to the provisions of these Regulations, the State Commission may, by general or specific order, make such provisions not inconsistent with the provisions of the Act as may appear to be necessary for removing the difficulty.

12. Therefore, in exercise of power under Regulation 19 of RPO-REC Regulations 2016, the Commission rules that the composite RPO targets for the CPPs commissioned before 1 April 2016 shall be 9% for the Operating Period of such Regulations, Provided that in case of any augmentation of the Captive Generating Plant, the RPO target for augmented capacity shall be equal to the RPO target applicable for the year in which such augmented capacity has been commissioned. For the Projects 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, for the Operating Period of RPO-REC Regulations 2016 onwards.
13. Further, the Commission notes that MEDA has requested to provide the bifurcation of the composite target of 9%, in terms of Solar and Non-Solar sources. In this regard, the Commission notes that in accordance with the MoP's letter dated 1 October 2019, the Solar and Non-Solar targets are subjected to the RPO targets notified by the Commission for FY 2015-16. Accordingly, for the projects commissioned before 1 April, 2016, the Solar and Non-Solar targets shall be 0.5% and 8.5% respectively, subjected to the provisions for cross-over of one source to another, as provided in the RPO-REC Regulations 2016 and 2019.
14. Hence, the following Order.

ORDER

1. **Case No. 130 of 2020 is allowed.**
2. **The Renewable Purchase Obligation Targets for Captive Power Plants shall be as per the dispensation provided in Para. 12.**

Sd/-
(Mukesh Khullar)
Member

Sd/-
(I.M. Bohari)
Member

