

Rajasthan Electricity Regulatory Commission

Petition No. RERC-1507/19

Petition under Section 86(1)(e) & 142 of the Electricity Act, 2003 in the matter of non compliance of Renewable Energy Purchase Obligation by Discoms for FY 2015-16 to 2017-18.

Coram:

Shri Shreemat Pandey, Chairman
Shri S.C. Dinkar, Member
Shri Prithvi Raj, Member

Petitioner : Rajasthan Renewable Energy Corporation Ltd.

Respondent :
1. Jaipur Vidyut Vitran Nigam Ltd.
2. Ajmer Vidyut Vitran Nigam Ltd.
3. Jodhpur Vidyut Vitran Nigam Ltd.
4. Rajasthan Urja Vikas Nigam Ltd.
5. State Load Despatch Centre

Date of hearing : 07.08.2019, 04.09.2019, 24.09.2019, 24.10.2019,
10.12.2019, 12.02.2020, 19.03.2020, 09.06.2020 and
29.07.2020

Present :
1. Sh. Harish Chandra Sharma, Advocate for Petitioner
2. Ms. Parineetu Jain, Advocate for Discoms
3. Sh. Sandeep Pathak, Advocate for SLDC
4. Sh. R. N. Birda, Authorised rep. for Discoms

Order Date:

09.10.2020

ORDER

1. Rajasthan Renewable Energy Corporation Ltd. (RREC) has filed a petition on 17.06.2019 under Section 86 (1) (e) & 142 of the Electricity Act, 2003 read with Regulation 7 & 9 of RERC (Renewable Energy Certificate and Renewable Purchase Obligation Compliance Framework) Regulations, 2010 (RERC RPO Regulations, 2010) inter alia seeking directions against the Discoms for non-compliance of Renewable Energy Purchase Obligation (RPO) for the financial year 2015-16, 2016-17 and 2017-18.
2. Notices were issued to Discoms on 19.06.2019 for filing reply on the petition. Discoms and RUVN accordingly filed a common reply on 06.09.2019.
3. Matter was heard on 07.08.2019 Commission directed to implead State Load Despatch Centre (SLDC) as necessary party to the petition. Accordingly notice was issued to SLDC for filing its reply on the petition. Accordingly, SLDC filed its reply on 19.09.2019.
4. Commission in hearing dated 24.09.2019 directed Discoms to furnish (i) specific reasons for non-achieving RPO targets (ii) action taken for compliance of order dated 14.11.2017 of the Commission and (iii) detailed year wise action plan for achieving RPO target in future. Commission also directed SLDC to develop a frame work for monitoring RPO targets. Accordingly, Discoms and SLDC submitted their additional reply on 01.11.2019 and 29.09.2019 respectively.
5. Commission on 10.12.2019 directed Discoms to furnish revised action plan for fulfillment of RPO target including the backlog of previous years. Discoms submitted the revised plan on 04.02.20 and 17.03.20.

6. The matter was finally heard on 29.07.2020 Sh. Harish Chandra Sharma, Advocate appeared for Petitioner, Ms. Parineetu Jain, Advocate appeared for Discoms, Sh. Sandeep Pathak, Advocate appeared for SLDC.
7. Petitioner in its petition, additional submissions and during hearing has submitted as under:
 - 7.1 The Petitioner is a State Agency for monitoring Renewable Energy Obligation compliance as per the RPO Regulations. The Petitioner is required to collect information from renewable energy generating company, obligated entities, SLDC etc on quarterly basis, compile the information to compute the RPO fulfillment by the obligated entities indicating separately the direct purchase of renewable energy as well as purchase through REC mechanism and submit status report to the Commission in the stipulated format and also to suggest appropriate action to the Commission if required for compliance of the renewable purchase obligation.
 - 7.2 Section. 86 (1) (e) of the Electricity Act, 2003 mandates the State Commission to promote cogeneration 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 total consumption of electricity in the area of Distribution Licensee.
 - 7.3 To give effect to the objects and purpose of Section 86 (1) (e) of the Electricity Act, 2003, the Commission has framed and notified the RERC RPO Regulations, 2007 and Regulations, 2010 applicable on the electricity drawn from the Captive Power Plants and through Open Access.

- 7.4 The RERC RPO Regulations of 2007 read with RERC RPO Regulations, 2010 impose liability upon the end users to buy minimum percentage of renewable energy. These Regulations are applicable to (1) the Distribution licensees including deemed licensees, (2) Open Access Consumers and (3) Captive Power Plants of installed capacity of 1 MW and above.
- 7.5 The Electricity Act, 2003 mandates the regular consumers of the distribution companies as well as Open Access consumers to fulfill the Renewable Energy Obligation without any discrimination. Therefore, the Commission framed the RERC RPO Regulations, 2007 and Regulations of 2010 which were amended thereafter, making it mandatory for the Open Access Consumers to comply with the Renewable Energy Obligations.
- 7.6 In spite of various letters and notices, the Respondents neglected and miserably failed to submit the details of the total energy generated consumed and the extent of fulfillment of the Renewable Energy Obligations.
- 7.7 The Renewable Purchase Obligation of the Respondents being an obligated entity under the RERC RPO Regulations of 2010 are expressed in the following percentage of the total energy consumed or drawn:

Sr. No.	Year	RPO in percentage
1.	2015-2016	10.20%
2.	2016-2017	11.40%
3.	2017-2018	14.25%

- 7.8 The above mentioned targets have not been fulfilled by the Discoms. There is a shortfall in compliance. As per the data made available by the Rajasthan Urja Vikas Nigam Ltd. (hereinafter, RUVNL), the Discoms have not been able to achieve the targets in Wind, Biomass and Solar energy.

- 7.9 As per Regulation 6 (3) of the RERC RPO Regulations, 2010, it is the responsibility of the Petitioner as State Agency to submit quarterly status report to the Commission in respect of compliance of renewable purchase obligation by the obligated entities in the format as stipulated by the Commission and may suggest appropriate action to the Commission if required for compliance of the renewable purchase obligation. According to Regulations 7 (3), it was the duty of the obligated entities to submit a detailed statement regarding total electricity drawn/consumed and renewable energy/REC purchased at the end of each financial year duly certified by the auditors to the State Agency on or before ensuing 30th September. The Respondents always committed default in complying with the terms and conditions mentioned in the RERC RPO Regulations, 2010. Whereas, Regulations 9 has provisions for consequences of default.
- 7.10 In view of the above Petitioner has written letters to the respective Discoms to make up the shortfall in RPO compliance.
- 7.11 A petition of the similar nature was filed before the Hon'ble Commission bearing no. 867/16 by the Petitioner. The Commission passed an order on 14.11.2017 thereby directing the Discoms to make up the shortfall in the next five years by buying renewable energy which was available in plenty through reverse bidding.
- 7.12 The Respondents have failed and neglected to provide the details of the RPO compliance. Non compliance of the Respondents is in clear violation of the Regulation 9.2 of the Regulations. The inaction on the part of the Respondents also violates the order passed by the Hon'ble High court of Rajasthan, Jaipur Bench Jaipur dated 31.08.2012.
- 7.13 In view of above it is prayed that in the interest of justice, equity and public interest, the Respondents Discoms may kindly be directed to

make up the shortfall in the targets for the period 2015-16, 2016-17 and 2017-18. In addition to that penal action be taken against the Respondent Discoms in view of Section 142 of the Act.

8. Respondent Discoms and RUVN in their common reply, additional submissions and during hearing have submitted as under:

8.1 The Commission has notified the RERC RPO Regulations, 2010 in exercise of powers u/s.61, 66, 86(1)(e) and 181 of the Electricity Act, 2003. Section 61(h), 86(1)(e) read with Section 181 deals with the Regulations for "Renewable Sources of Energy" and not with the Renewable Energy Certificate.

8.2 The Renewable Energy Certificate is dealt with by the CERC (Terms and conditions for recognition and issuance of Renewable Energy Certificate for Renewable Energy Generation) Regulation, 2010 (hereinafter referred to as the 'CERC REC Regulations, 2010') which have been notified in exercise of powers under Section 66 read with Section 178 of the Electricity Act, 2003. Further, the CERC REC Regulations, 2010 are for development of a market, a facilitative function by the Appropriate Commission. It is not in the nature of mandate which the Appropriate Commission can issue u/s 61(h) and 86(1)(e) of the Electricity Act.

8.3 The term 'Renewable Energy Sources' as defined in Regulation 3(q) of the RERC RPO Regulations 2010. Therefore the perusal of the definition would reveal that the term renewable energy sources do not include the Renewable Energy Certificate (REC) and hence the REC cannot be treated as a renewable energy source.

8.4 It is submitted that Regulation 4 of the RERC RPO Regulations, 2010 deals with RPO. The perusal of Regulation 4 would reveal that the obligation

which has been casted on the obligated entity is for the procurement of electricity generated through the renewable energy sources and not through REC.

- 8.5 The primary obligation of a distributor licensee / obligated entity as per Regulation 4 of RERC RPO Regulations, 2010 is to purchase electricity from the renewable energy sources. However, Regulation 5 only provides for an alternative, where the obligated entity can purchase REC. Further, the default provided in Regulation 9 is in respect of failure to fulfill the RPO whereas in accordance with Regulation 4 RPO means procurement of electricity through renewable energy sources and not the procurement of REC.
- 8.6 The default would occur only when the obligated entity does not procure electricity from renewable energy sources despite its availability. The purchase of energy from renewable sources by the Discom would largely depend upon the availability of energy from renewable sources from the generators. Hence, the short fall which has arisen in compliance of RPO cannot be attributed to the default of the Discoms rather it is the availability of the renewable energy which has to be looked into.
- 8.7 Regulation 9.2 of RERC RPO Regulations of 2010 specifies that in case of genuine difficulty in complying with the RPO because of non-availability of renewable energy then the Commission may allow to carry forward the compliance requirement to the next year or may waive the same. Therefore, there was no deliberate or willful failure on the part of the Respondents in not purchasing the electricity from the renewable energy sources.

- 8.8 Commission vide order dated 14.11.2017 directed the Discoms to make up the short fall for the period 23.12.2010 till 31.03.2015 in the next five years by purchasing renewable energy. It is worth mentioning here that the extension of period by five years would be expiring in 2022. The Commission in its order dated 14.11.2017 did appreciate the efforts of the Discoms made to fulfill the RPO compliance.
- 8.9 The Commission on 11.01.2019 has granted flexibility to the answering Respondents in respect of inter change of solar and non solar obligations upto 20% shortfall.
- 8.10 The reasons for non achieving the RPO target was due to some of the projects which have not come up on the schedule date of commissioning. Also the projects which have declared the COD have not been able to achieve normative CUF. If the developer of solar power and wind power would have achieved the normative CUF as envisaged, the Respondents Discoms would have duly fulfilled the RPO with the contracted quantum of power.
- 8.11 The reason for having not achieved the anticipated target is not an account of any fault of the Respondents rather apart from various other reasons one of the major reason is that Actual CUF achieved by the wind generators is only 15.83%, 15.17% & 17.07% in the year 2016-17, 2017-18 & 2018-19 respectively against the normative CUF specified by the Commission and considered for calculation of levelised tariff.
- 8.12 From the year 2020-2021 onwards Discoms shall be capable to achieve the wind targets without considering the flexibility of 20 % granted by the Commission. Also even if there is any delay in commissioning of the proposed capacity or the actual CUF is not as per the norms, yet

conveniently and undoubtedly the Discoms would be able to achieve the wind target by taking into account the flexibility of 20%.

- 8.13 Similarly, Solar power plants commissioned up to year 2015-16 have not been able to achieve the CUF as stated in the PPA/PSA. Therefore it would be appreciated that the compliance of the RPO cannot be made individually by the Discoms till there is enough generations by the generators.
- 8.14 The Discoms vide letter dated 22.09.2015 conveyed consent to NTPC Ltd. for procurement of solar power in GOI scheme meant for bundling of solar power with thermal power from the plants which had completed their useful life. Ministry of Power, GOI vide letter dated 17.07.2015 allocated 529 MW solar power to Rajasthan Discoms. This capacity was expected in the middle of 2017-18 and was considered for fulfillment of RPO in FY 2017-18. But somehow out of 529 MW, NTPC is supplying only 260 MW solar power in this scheme for the reasons not divulged to the Respondents.
- 8.15 Discoms signed a PSA in March 2013 with RRECL for procurement of 75 MW solar power. However, upto the end of April 2018 solar capacity commissioned was 60 MW, 5 MW was commissioned in the month of May 2018 and 10 MW capacity has not been commissioned yet and no reason has been assigned by the RRECL for not having commissioned 10 MW till date.
- 8.16 The Discoms had conveyed their consent on 27.07.2016 for procurement of 750 MW solar power from SECI. This solar capacity of 750 MW was progressively commissioned from the month of August to October 2018. It took a time of more than 26 months from the date of consent for the reasons may be beyond the control of SECI.

- 8.17 The Discoms vide letter dated 27.06.2018 conveyed consent to SECI for procurement of 750 MW solar power in tranche I. That subsequent to the changes made by the MOP in the guidelines issued for competitive bidding in respect of procurement of solar power and introduction of safeguard duty, it took approx nine months to finalize the tender document by SECI and Reverse auction was held on 01.03.2019. The Discoms on 01.03.2019 again conveyed its consent to procure 750 MW in tranche II and reverse auction was held on 19.06.2019. PSAs have already been signed between RUVNL & SECI. Further as per guidelines there is time period of 18-21 months for commissioning of the projects. These projects are expected to be commissioned in the last quarter of 2020-21 and first quarter of 2021-22.
- 8.18 RUVNL also have conveyed consent to SECI for 1070 MW solar power. SECI is in the process to initiate bid. That the process for procurement of 600 MW solar power and 500 MW wind power has already been initiated and is in progress. RRECL has floated tender inquiry to invite bid for 100 MW decentralized solar power.
- 8.19 Hence, the short fall which has arisen in compliance of RPO cannot be attributed to the default of the Discoms rather it is the availability of the renewable energy which has to be looked into.
- 8.20 Respondents have prepared detailed action plan and has submitted that subsequent to the notification of RPO targets by the Commission vide order dated 11.01.2019, RUVNL assessed its requirement of solar/wind power to meet the respective obligations and prepared year wise trajectory for addition of RE capacity in such a way that capacity proposed to be procured in a particular year is more than the anticipated requirement for that year. RUVNL is progressively taking steps to initiate bidding keeping in view the timeline provided for

commissioning, in the guidelines by MOP. The early commissioning of these projects will also help in meeting the shortfall of previous year.

- 8.21 The Discoms are encouraging the installation of Roof Top solar power projects in residential sector as well as on government buildings. Generation from these rooftop plants will meet the obligation of the Discoms. However, till date solar PV capacity of 150 MW has been installed in the State under net metering scheme. In accordance with Regulation 12 of the RERC (Connectivity and Net Metering for Roof Top and Small Solar Grid Interactive Systems), Regulations 2015, the quantum of electricity generated from the Roof Top PV Solar Plant shall qualify towards compliance of RPO for the distribution licensee.
- 8.22 In compliance of the guidelines of MNRE, the Government of Rajasthan has decided to develop smaller size solar PV projects of 600 MW capacity in year 2019-20 as per the KUSUM guidelines. In furtherance of these guidelines capacity of 1000 MW has been planned for FY 2020-21 and another 1000 MW has been planned for FY 2021-22.
- 8.23 Discoms are continuously making efforts to comply with the directions of Commission to fulfill RPO. It would be appreciated that despite the whole hearted efforts of the Discoms, there are some impediments which are beyond the control of the Discoms such as non-achievement of normative CUF by RE generators, high project cost, technology in developing stages etc.
- 8.24 As per the observation of the Commission in petition no. 867/16 for making up of the past shortfall, it is submitted that w.e.f. Jan 11 to 2014-15 the past shortfall is 3607.86 MU and 2015-16 to 2017-18 the past shortfall is 5712.24 MU. Total short fall from Jan-11 to Nov-19 is 10107.41 MU. In order to make up for this shortfall by way of procuring it on long

term basis doesn't appear to be possible/practical since the quantum of shortfall and time period is fixed and it shall also put additional financial burden on the Discoms which is neither justified nor the objective of RPO Compliance.

8.25 As a step forward towards sincerely making RPO compliance, RUVNL has assessed its future requirement of solar & wind energy to meet RPO considering a CUF of 20 % in respect of existing & 25% upcoming solar plants and 16% in respect of existing wind & 25% for upcoming wind plants. Total excess anticipated generation from 2019-20 to 2023-24 is 11045.1 MU. It would be appreciated that while assessing the aforesaid requirement, RUVNL has considered a flexibility of 20% provided by the Commission to meet Non solar RPO by solar RPO.

8.26 In the year 2018-19, Discoms have been able to achieve almost the solar as well as total RPO. In the current year up to the month of October 2019, Discoms have exceeded not only the solar RPO but have also achieved the total RPO target as fixed by the Commission.

8.27 The term of the PSAs is for a period of 25 years from the scheduled date of commercial operation. However, the Developer may commission its project prior to the scheduled date of commercial operation and the Discoms shall purchase the generation up to scheduled date of commercial operation at 75% of PPA tariff. In case, the generation exceeds the maximum permissible limit, then in that eventuality, the Discom may purchase this excess generation at 75% of PPA tariff. Hence, such provisions shall definitely motivate the developers for early commissioning of the projects and maintain the project up to the useful life, since the payment on account of early commissioning & excess generation is an incentive to the generators over & above the agreed tariff.

- 8.28 Discoms are promoting setting up of rooftop Solar PV power projects under net metering scheme. Up to the Month of January 2020, total MW installed in Rajasthan under net metering is approx 250 MW. MNRE recently notified this scheme for CPSUs also. Solar capacity set up under net metering is over and above the future capacity assessed. Generation from such capacity of rooftop solar power plants will meet the shortfall of previous year to some extent. Regulation 12 of RERC (Connectivity and Net Metering for rooftop & Small grid interactive projects) Regulations 2015 states that generation from these solar power PV plants shall qualify towards compliance of solar obligation of the respective Discom.
- 8.29 Further some captive users have also installed solar & wind power plants of capacity below 1 MW. As per RERC (RPO) Regulations, CPP below 1 MW are not an obligated entity, hence their generation shall qualify towards the RPO compliance of the respective Discoms.
- 8.30 The Bhakhara Beas Management Board (BBMB) has installed Grid connected Rooftop solar PV plants at various sub-stations and power Houses and further intends to install more Rooftop solar power plants at various project stations and sub-stations of BBMB. The BBMB informed the apportionment of solar energy to partner states for claiming RPO and the total solar energy apportioned to Rajasthan is 2.05 LU up to November 2019.
- 8.31 The Ministry of New & Renewable Energy has allocated a quantum of 325 MW solar under PM KUSUM Component-A and has given a target of making 12500 existing grid connected agriculture pumps solar powered. The Government of Rajasthan has requested MNRE to increase the allocation in component-A and Discoms are planning to purchase power from 600 MW decentralized solar power plants.

- 8.32 In view of above, it is submitted that Discoms shall definitely be able to achieve the RPO targets along with the short fall in past years. Therefore prayed to sympathetically consider the submissions of the Discoms and grant a reasonable extension of time to achieve the shortfall of past years, if there remains any.
9. SLDC in its reply has submitted that data available at SLDC can not be used to calculate the RPO compliance for the period 2015-16 to 2017-18. Further since no averments or relief is claimed against the SLDC therefore petition may be dismissed qua SLDC.

Commission's view

10. Commission has carefully considered the submissions made by RREC, Discoms and SLDC.
11. It is contended by the Petitioner that the Discoms have not fulfilled the RPO in terms of energy as prescribed under the RPO Regulations for FY 2015-16 to 2017-18 and prayed that Discoms may be directed to make up the shortfall in the targets for the said period and also initiate penal action against the Discoms as per Section 142 of the Electricity Act of 2003 for non-compliance of RPO Regulations.
12. Per contra Discoms have submitted that non fulfillment of RPO was not deliberate and is on account of the not making available the RE Power by the Generators with whom Petitioner had signed adequate number of PPAs. It is submitted that they have made all out efforts as evident from the material produced by them, for complying with RPO and therefore it cannot be said that they have not complied with RPO. Discoms have also submitted detailed action plan to fulfill the RPO in future.

13. It is submitted by Discoms that the RPO specified by the RPO Regulations, 2010 has to be considered in the light of the electricity available from the renewable energy sources, the PPA entered into, the time taken by the Renewable Energy Developers with whom the PPA was entered into establish the Renewable Power Projects, the quantum of power offered by the renewable energy source Developers, the quantum of actual generation of power as against the contracted capacity and normative Capacity Utilization Factor.
14. Discom also submitted that if the purchase of renewable energy has been affected by the supply constraints, non-availability of the Developer offering to sell renewable energy, delay in commissioning of the renewable power project beyond the Scheduled Commercial Operation Date, the failure of the Developers to achieve the normative CUF qua the contracted capacity with the Discoms etc., in such circumstance, the quantum of energy affected not available on account of the aspects mentioned above should not be considered as a failure on the part of the Discoms to fulfill the RPO.
15. Discoms submitted that Regulation 4 of the RERC RPO Regulations, 2010 deals with the Renewable purchase Obligation. The obligation which has been casted on the obligated entity is for the procurement of electricity generated through the renewable energy sources and not through REC.
16. Considering the submissions of Discoms that they have made every effort to comply with RPO and have signed sufficient number of PPAs under which requisite quantity of electricity could have been obtained for compliance of RPO, Commission observes that in general there is no slackness on the part of Discoms in making compliance of RPO.

Accordingly, Commission hold that there is no case made out to initiate action or impose penalty under Section 142 of the Act on the Discoms.

17. Commission also observes that even though adequate quantum of PPAs were signed by Discoms in the past, the generation in terms of energy was not to the expected level and consequently there is shortage in RPO in terms of energy. Therefore, Commission advise the Respondent Discoms to assess the energy requirement for compliance of RPO more realistically in advance and sign the PPA accordingly in future and comply with RPO Regulations without fail.
18. So far as this shortfall is concerned, Commission directs Discoms to make up the shortfall in the next three years by buying renewable energy which is now available in plenty through reverse bidding as being done now.
19. With the above observations, this petition stand disposed of.

(Prithvi Raj)
Member

(S.C. Dinkar)
Member

(Shreemat Pandey)
Chairman